Supreme Court, U.S.
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No. 97-1933

In The

Supreme Court of the United States

October Term, 1997

IN RE BANK OF SAIPAN, Executor of the Estate of LARRY LEE HILLBLOM,

Petitioner,

vs.

UNITED STATES DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS,

Respondent,

CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON and GREENPARK INTERNATIONAL, LTD.,

Real Parties in Interest.

On Petition for Writ of Prohibition and/or Mandamus to the United States District Court for the Northern Mariana Islands

BRIEF OF REAL PARTY IN INTEREST CHUNG PO YANG IN OPPOSITION TO PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS

CONRAD K. HARPER
Counsel of Record
SIMPSON THACHER & BARTLETT
Attorneys for Real Party in Interest Chung Po Yang
425 Lexington Avenue
New York, New York 10017-3954
(212) 455-2000

Of Counsel:
FREDERICK A. MORTON, JR.
SEAN THOMAS KEELY
SIMPSON THACHER & BARTLETT

QUESTIONS PRESENTED

1. Whether the Petitioner has failed to establish the extraordinary circumstances necessary to invoke this Court's discretion to review interlocutory orders and to grant an extraordinary writ.

2. Whether the United States District Court for the Northern Mariana Islands properly denied the Petitioner's motion to remand an action removed by Real Party in Interest Chung Po Yang, pursuant to the Convention on Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §§ 201-208 (1998), and properly stayed parallel state proceedings threatening to destroy the removed arbitrable claims.

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STATEMENT OF THE CASE

On September 1, 1995, Chung Po Yang ("Chung") and others filed a Notice of Claim with the Bank of Saipan, Executor of the Estate of Larry Lee Hillblom (the "Executor"). (Pet. App. 27). In that Notice of Claim, Chung apprised the Executor of his rights to the proceeds of sale of certain shares of the DHL Corporation ("DHLC") pursuant to a set of agreements he had made with Larry Lee Hillblom (the "Hillblom-Chung Agreements"). (Resp. App. 1a-43a). Chung then awaited a decision by the Executor in the normal course of the probate of whether or not to allow his claim. The Executor has never made a decision on the claim.

In July 1997, with no decision by the Executor and with the expiration of a two-year statute of limitations looming, Chung filed two declaratory actions in the Superior Court of the Commonwealth of the Northern Mariana Islands (the "CNMI"), preserving his rights to the DHLC shares and to $300,000 he had loaned the Estate (the "Protective Actions"). (Pet. App. 31). The Executor denied the $300,000 claim on May 28, 1998. (Resp. App. 48a). Because these Protective Actions were filed only to preserve his claims against the running of the statute of limitations, Chung never served them on the Executor.

At the same time in July 1997, in recognition of the same statute of limitations, the Executor served on Chung and several co-defendants what it styled a "cross-claim" in the probate action — although it had still made no decision allowing or denying Chung's claims. (Pet. App. 35). The CNMI Probate Code, however, makes no provision for the filing of cross-claims, but only for the allowance or denial of claims. The Probate Court later chastised the Executor for filing this improper "cross-claim." (Resp. App. 51a). In the "cross-claim", the Executor asserted, *inter alia*, that Chung had failed to pay $226 million

with interest under the Hillblom-Chung Agreements and, therefore, that Chung was not entitled to any share in the proceeds of sale of the DHLC shares.

Three months later in October 1997, the Executor — still having made no decision on Chung's claims — sought to extinguish the claims through summary contempt proceedings. In those proceedings, the Executor argued to the CNMI Probate Court that Chung's assertion of an interest in certain shares of DHL International ("DHLI") held by the Estate had delayed the Estate's sale of the shares to DHLI and that Chung had interfered with the Executor's efforts to close the sale. The sale had in fact taken place on September 26, 1997 following an agreement that Chung's claims, if ultimately upheld, could be satisfied from the Executor's proceeds from the sale of the shares rather than from the shares themselves. (Resp. App. 54a). Three weeks after the sale, on October 16, 1997, Chung was required to show cause why an injunction against his interference with the sale should not be continued against him. (Pet. App. 44). Chung's counsel moved to vacate the injunction as moot and appeared on his behalf. (Pet. App. 48).

At the October 16 hearing, although the sale with DHLI had already closed and the predicate for the injunction was moot, the Executor urged the Probate Court to hold Chung in civil contempt for not personally appearing at the hearing. (Pet. App. 48). As a sanction for this alleged contempt, the Executor sought a default judgment dismissing with prejudice Chung's claim for the DHLC shares, his claim for $300,000, and "any other claim Mr. Chung may have against the Estate". (Pet. App. 48). Without hearing the merits of Chung's mootness motion, the Probate Court adopted the Executor's proposed order, held Chung in civil contempt, and further ordered him to show cause on November 6, 1997 why the Executor's proposed sanctions should not be entered against him. (Pet. App. 48).

On October 30, 1997, Chung removed the Executor's "cross-claim" to the United States District Court for the Northern Mariana Islands pursuant to 28 U.S.C. § 1446 (1998) and 9 U.S.C. § 205 (1998). (Pet. App. 50). As prescribed by statute, the removal was before trial of the "cross-claim"; timeliness did not depend on the pendency of contempt proceedings (*contra* Pet. 10). Each of Chung's co-defendants provided written consents to the removal of the "cross-claim". (Pet. App. 59-64). Chung immediately moved the District Court to stay litigation and to compel arbitration of the claims in Hong Kong pursuant to arbitration clauses in the Hillblom-Chung Agreements. (Pet. App. 65). He also filed a Request for Arbitration with the International Chamber of Commerce (the "ICC"). (Resp. App. 58a).

The Executor moved the District Court to dismiss or remand the "cross-claim", arguing principally that Chung was not a defendant for purposes of removal. The District Court heard oral argument on the issue, and on Saturday, November 8, 1997, denied the Executor's motion. The court held that the "cross-claim" had been properly removed and that the contempt proceedings, in which the Executor threatened "destruction" of Chung's arbitrable claims, were stayed. (Pet. 14, Pet. App. 2-3). In its Decision After Order of November 8, 1997, the District Court set forth its reasoning and confirmed that the contempt proceedings had been stayed because they "are inseparable from the substance and merits of Chung's removed claims." (Pet. App. 5 n.2). The District Court specifically noted that "the probate proceedings and the contempt arising therefrom remain before the Commonwealth Superior Court, to which the parties will again return at some point in the future." (Pet. App. 5 n.2).

On Monday, November 10, 1997, the first business day after the District Court's order denying remand, the Executor answered Chung's unserved complaints in the Protective

Actions. (Resp. App. 71a, 80a). On that same day, the Executor dismissed an unserved complaint against Chung which it had filed under seal in the CNMI Superior Court. (Resp. App. 89a). In that complaint — in which the Executor had asserted the same claims set forth in the "cross-claim" — Chung was undeniably a defendant for removal purposes. (*Compare* Resp. App. 91a *with* Pet. App. 35). Also on November 10, the Executor appeared before the Probate Court and stated: "[W]ith respect to the District Court's order [denying remand and staying the contempt proceedings] . . . the Executor doesn't buy it even zero percent." (Resp. App. 101a).

A week later, on November 18, 1997, the Executor filed with the District Court a motion for clarification and reconsideration of the order denying remand, asserting again that Chung was not a defendant for purposes of removal. In the oral argument on the Executor's motion and on Chung's motion to stay litigation and to compel arbitration, the District Court pointed out that any order it might issue compelling arbitration would be rendered nugatory if the claims were summarily dismissed in the contempt proceedings. (Resp. App. 106a). The court, therefore, asked the Executor to withdraw its proposed sanction of dismissal in the contempt proceedings. The Executor refused. (Resp. App. 107a).

On January 13, 1998, the District Court denied the Executor's motion, reaffirming that removal was proper and that "insofar as [the contempt proceedings] may have affected Chung's contractual right to arbitration they were stayed." (Pet. App. 20). The court also granted Chung's motion to compel arbitration, rejecting the Executor's argument that Chung had waived his right to arbitration and noting:

> [f]rom all that has been presented here, this court is persuaded that [the Executor has engaged in]

> procedural maneuvering designed to avoid or wholly negate the substance of Chung's claims. . . .

(Pet. App. 21-22).

Since that order, the ICC arbitration has been proceeding apace. The three-member arbitral tribunal has been chosen, the Terms of Reference have been agreed among the parties, and a jurisdictional hearing has been scheduled for October 26, 1998 in Hong Kong (Resp. App. 110a, 113a, 138a).

On February 11, 1998, the Executor filed with the United States Court of Appeals for the Ninth Circuit a petition for a writ of prohibition and/or mandamus. (Pet. App. 85). That petition was denied on April 30, 1998. (Pet. App. 1). The Executor's petition in this Court neglects to mention that the Executor has filed a motion for reconsideration in the Ninth Circuit which remains pending. (Resp. App. 140a).

REASONS FOR DENYING THE WRIT

This case presents no novel issues of law for this Court to determine. The District Court applied settled case law construing the federal removal statutes and the Convention on Recognition and Enforcement of Foreign Arbitral Awards (9 U.S.C. §§ 201-208 (1998)) (the "New York Convention"). Even if the District Court applied settled authority incorrectly, that error would not justify extraordinary review by the Court at this interlocutory phase. Rather, as this Court and several of the Courts of Appeals have held, the policies against interlocutory review and in favor of international arbitration militate against the issuance of a writ. The District Court properly denied remand of the Executor's "cross-claim" and compelled arbitration.

I.

THE PETITIONER'S ASSERTION OF ERROR IS NOT THE EXTRAORDINARY SHOWING NECESSARY TO JUSTIFY INTERFERING WITH CHUNG'S FEDERALLY-GUARANTEED ARBITRATION RIGHTS.

Although the Executor seeks an extraordinary writ from this Court, it nowhere addresses the standards for granting such relief. They are undeniably high:

> Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

Sup. Ct. R. 20.1 (1998). Accordingly, this Court has traditionally been chary of granting this relief. In *Ex parte Fahey*, 332 U.S. 258, 259 (1947), for example, the Court denied a petition for a writ of prohibition and/or mandamus even though "[t]he petition involve[d] serious questions of law and of fact." The Court expressed its conviction that:

> [m]andamus, prohibition and injunction against judges are drastic and extraordinary remedies. We do not doubt power in a proper case to issue such writs. But they have the unfortunate consequence of making the judge a litigant, obliged to obtain personal counsel or to leave his defense to one of the litigants before him. *These remedies should be*

> *resorted to only where appeal is a clearly inadequate remedy. We are unwilling to utilize them as a substitute for appeal. As extraordinary remedies, they are reserved for really extraordinary causes.*

Id. at 259-60 (emphasis supplied). Here, the Executor seeks to derail arbitration proceedings between the parties but presents no issues that an appeal of a final order could not cure. Because it fails to satisfy the grounds for granting extraordinary relief, the petition should be denied.

A. The Executor Fails To Present The Extraordinary Circumstances Necessary To Bypass Appeal And Issue A Writ.

Interlocutory review of a lower court's orders — whether by appeal or by writ — is not favored. *See Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980) ("Although a simple showing of error may suffice to obtain a reversal on direct appeal, to issue a writ of mandamus under such circumstances 'would undermine the settled limitations upon the power of an appellate court to review interlocutory orders.' ") (citations omitted). A party seeking an extraordinary writ, therefore, must: (i) "have no other adequate means to attain the relief [it] desires"; and (ii) "satisfy the burden of showing that [its] right to issuance of the writ is 'clear and indisputable' ". *Kerr v. United States Dist. Court for N.D. of Calif.*, 426 U.S. 394, 403 (1976); *see also Mallard v. United States Dist. Court for S.D. of Iowa*, 490 U.S. 296, 309 (1989) (same). The Executor urges that Chung could not have removed the "cross-claim" and that the District Court's error in allowing removal will result in long delay until the arbitration is completed. Neither the alleged error nor delay justifies issuing an extraordinary writ.

The District Court's ruling on removal "was made in the course of the exercise of the court's jurisdiction to decide issues properly brought before it." *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 382 (1953). Because it was within the District Court's jurisdiction to consider the Executor's motions for remand and reconsideration, "[i]ts decision against petitioner, even if erroneous . . . involved no abuse of judicial power, and is reviewable upon appeal after final judgment." *Id.* (citations omitted). Nor does the Executor offer any support for its bald statement that the District Court's order has caused interference with the probate which "cannot be cured by a possible appeal". (Pet. 18). When the petitioner in *Holland* urged that " 'judicial inconvenience and hardship' occasioned by appeal being delayed until after final judgment" justified issuing a writ, this Court rejected the petition because "extraordinary writs cannot be used as substitutes for appeals even though hardship may result from delay and perhaps unnecessary trial. . . ." *Holland*, 346 U.S. at 383 (citations omitted). The instant petition should be denied for the same reason.

B. Federal Policy In Favor Of International Arbitration Counsels Against Allowing The Executor Interlocutory Review Of The District Court's Orders By Means Of An Extraordinary Writ.

Even if the Executor were to make some showing justifying relief, that showing would be trumped by the strong federal policy in favor of arbitration. *See, e.g., Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983) (Federal Arbitration Act expresses a settled "congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary"). In this case, that policy is even stronger because of the international nature of the arbitration agreements. As this Court has held:

> [since the adoption of the New York Convention,] the emphatic federal policy in favor of arbitral dispute resolution . . . applies with special force in the field of international commerce.

Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 631 (1985).

Chung removed the "cross-claim" to compel arbitration of the dispute pursuant to the Hillblom-Chung Agreements. The contempt proceedings against Chung were necessarily stayed at the time of removal because one of the sanctions sought by the Executor in those summary proceedings was the dismissal with prejudice of Chung's arbitrable claims against the Estate. Granting a writ to vacate the District Court's orders, therefore, would both offend the federal policy against interlocutory review and stymie the policy in favor of federally-guaranteed international arbitration rights.

In one of the few cases in which this Court has intimated that a writ would be proper, it did so to safeguard arbitration rights. *See General Atomic Co. v. Felter*, 436 U.S. 493, 497-98 (1978) (declining to issue formal writ if state court would vacate its order "to the extent that it places any restriction whatsoever upon GAC's exercise of its right to litigate arbitration claims in federal forums . . ."). In denying the Executor's previous petition, therefore, the Ninth Circuit was squarely within established law. *See, e.g., McDermott Int'l, Inc. v. Underwriters at Lloyds Subscribing to Memorandum of Ins. No. 104207*, 981 F.2d 744, 748 (5th Cir. 1993) (noting the burden on party seeking extraordinary writ and stating, "[h]ere, that burden is particularly heavy, because Congress has expressly limited interlocutory review of a district court decision on arbitration"); *Communications Workers of Am. v. American Tel. & Telegraph Co.*, 932 F.2d 199, 213 (3d Cir. 1991) (denying writ because

"an order to arbitrate is generally not immediately reviewable . . . because of federal policy favoring arbitration over litigation").

While the Executor asserts, by way of distinction, that compelled arbitration harms an estate in probate, the only harm articulated stems from awaiting a final order to appeal. *See, e.g.*, Pet. 14-15. In cases involving arbitration, courts have consistently rejected claims of delay as a reason for breaching the policy against interlocutory appeal. As the Ninth Circuit stated succinctly in *Abernathy v. Southern California Edison*, 885 F.2d 525 (9th Cir. 1989):

> Of course, if the litigant was justified in contending that arbitration was incorrectly ordered in the first place, he will have needlessly incurred the cost of arbitration. However, this type of inconvenience resulting when a sound defense interposed early in a litigation is erroneously rejected is the price of the final judgment rule and does not constitute irreparable harm.

Id. at 529 (internal quotations omitted). *A fortiori*, such claims cannot form a basis for extraordinary relief. *See In re American Marine Holding Co.*, 14 F.3d 276, 277 (5th Cir. 1994) (denying writ of mandamus because "[w]hether the district court erred in refusing to give Petitioners a jury trial on the issue of arbitrability . . . may be raised for appellate review after the arbitration is completed and a final judgment entered . . ."); *McDermott*, 981 F.2d at 748 ("we see no reason why all issues presented in this appeal cannot be raised in an appeal after the arbitration is completed and a final judgment entered . . ."); *Communication Workers*, 932 F.2d at 213 ("[t]he fact that AT&T may have to arbitrate before taking this appeal is not a basis for mandamus").

Even if delay were a basis for extraordinary relief, the Executor fails to establish it in this case. In its decision denying reconsideration, the District Court said that "such a claim [of delay] is entirely speculative." (Pet. App. 21). The Executor offers to this Court the same shopworn speculation. The Estate cannot possibly be wound up before 1999 (Resp. App. 156a), and there is no reason to assume the arbitration will not be concluded within the same time.

II.

THE DISTRICT COURT PROPERLY DENIED REMAND, COMPELLING ARBITRATION OF CHUNG'S CLAIMS AND PREVENTING INTERFERENCE WITH THAT ARBITRATION.

Even if this Court were to consider the merits of the Executor's challenge at this interlocutory stage, it should deny the petition because the Executor has made no "clear and indisputable" showing that the District Court erred in denying remand and compelling arbitration of the issues raised in the "cross-claim".

A. Because The CNMI Courts Are To Be Treated As State Courts, The Alleged Breach Of The Covenant Presents No Novel Issue For Decision By This Court.

The Executor argues here for the first time that judicial consideration should be given to whether the District Court's decisions violated the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 1801 (1998) (the "Covenant"). This Court should reject the argument because the Executor raises it for the first time. No mention of the Covenant or an alleged violation of it was made in either the

District Court (on the motion to remand or on the motion for reconsideration) or in the Ninth Circuit (on the petition for a writ or on the motion for reconsideration of the petition). "Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970); *see also Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 556 (1990) (same) (O'Connor, J., concurring).

Even if it does consider this new argument, the Court should reject it because the Covenant, which expressly adopts extant removal law, was not violated. The Covenant states:

> The relations between the courts established by the Constitution or laws of the United States and the courts of the Northern Mariana Islands with respect to . . . removal of causes . . . will be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several States. . . .

Covenant, Art. IV, § 403(a); 48 U.S.C. § 1824(a) (1998). The Executor's assertion, therefore, that this Court "has not construed the Covenant in a removal case" (Pet. 8), is of no moment. Existing removal jurisprudence is sufficient and undergirds the District Court's decisions.

B. Chung Properly Removed The Executor's "Cross-Claim" To Compel Arbitration Of His Federally-Protected Arbitrable Contract Claims.

In both its original decision denying remand of the "cross-claim" and its decision denying reconsideration of that order, the District Court properly found that it had jurisdiction under the removal statutes and the New York Convention and that Chung had complied with the removal requirements.

1. Arbitration of the issues raised by the "cross-claim" does not interfere with the probate.

In removing the Executor's "cross-claim", Chung exercised his federal rights under the New York Convention as provided in 9 U.S.C. § 205:

> Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending.

The Executor objects to the applicability of § 205, claiming that Chung could not remove the "cross-claim" to the District Court because "[f]ederal courts do not have power over matters of probate and estate administration." (Pet. 11) (citing *Markham v. Allen*, 326 U.S. 490, 494 (1946)). Chung, however, never claimed to remove the probate proceeding itself — only the action against him as a creditor of the Estate.

Markham, cited by the Executor as support for the probate exception to federal jurisdiction, actually confirms the jurisdiction of the District Court to consider the removed "cross-claim". That case involved an action brought in a federal district court by the Alien Property Custodian against an estate to determine the Custodian's claim to the entire net estate. *See* 326 U.S. at 492. The Ninth Circuit had ordered the case dismissed because it violated the probate exception. This Court reversed, holding:

> [I]t has been established by a long series of decisions of this Court that *federal courts of equity have*

> *jurisdiction to entertain suits in favor of creditors . . . and other claimants against a decedent's estate to establish their claims* so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court.

Markham, 326 U.S. at 494 (internal quotations omitted) (emphasis supplied).

Similarly, in *Princess Lida of Thurn & Taxis v. Thompson*, 305 U.S. 456, 466 (1939), this Court noted that the probate exception

> has no application to a case in federal court based upon diversity of citizenship, wherein the plaintiff seeks merely an adjudication . . . of his interest as a basis of a claim against a fund in the possession of a state court. . . .

In this case, Chung removed the "cross-claim" to the federal court so that an arbitral tribunal could adjudicate his interest in the shares or proceeds from sale of shares of DHLC held by the Estate. Chung's right to be heard in the District Court is even stronger than *Princess Lida* suggests, because his case arises not under diversity jurisdiction but under a treaty of the United States, the New York Convention. Application of the probate exception to this case, therefore, would reverse this Court's decision:

> declin[ing] to subvert the spirit of the United States' accession to the [New York] Convention by recognizing subject-matter exceptions where Congress has not expressly directed the courts to do so.

Mitsubishi Motors, 473 U.S. at 639 n.21.

The specific jurisdiction exercised by the District Court over Chung's claim as a creditor of the Estate does not run afoul of the Probate Court's general jurisdiction to administer the Estate.

2. *The Executor's misdenomination of its action as a "cross-claim" could not deprive Chung of his right as a defendant to remove the action.*

The Executor argues that Chung could not properly remove the "cross-claim" because he was not a defendant for removal purposes. It bases this argument on the dual fictions that: (i) Chung's administrative Notice of Claim in the probate proceeding made him "like a plaintiff"; and (ii) as a "cross-claim" defendant Chung "is not a 'defendant' within the meaning of the removal statutes." (Pet. 12). The District Court, however, pierced these fictions and found that Chung was indeed a defendant for purposes of removal.

First, Chung filed his Notice of Claim in an administrative proceeding — not in a litigated action. The purpose of the filing was for the Executor to allow or to deny the claim, rather than for Chung to litigate it in the Probate Court. As the District Court recognized, under the CNMI Probate Code, Chung did "not voluntarily elect as a 'plaintiff' to invoke a probate court's jurisdiction." (Pet. App. 10). As the drafters of the Uniform Probate Code (which was substantially adopted in the CNMI) stated, "filing of a claim with the probate court . . . does not serve to initiate a proceeding concerning the claim." Uniform Probate Code § 3-804 cmt. (1997). Chung's Notice of Claim, therefore, did not make him a plaintiff in an action against the Executor.

Second, in styling its action a "cross-claim", the Executor could not transmute Chung into a plaintiff. Indeed, the CNMI Probate Court itself told the Executor that there was no cross-

claim and that the Executor should have commenced a separate civil action:

> THE COURT: If you look at how this thing started, it's a probate . . . you give notice to the world, who are the heirs? Do you have any claim? . . . And then when Mr. Po Chung's claim came in, you, the Executor went out and say, counterclaim or whatever, cross claim or what, and then everything goes in disarray . . . [T]hat was the problem.
>
> * * *
>
> There's a procedural problem . . . I would blame it on the Executor because you don't have a cross claim. You file a separate action. Just like when you're gonna get money from somebody else, the Executor will say, may I go and file a law suit. So, *it should have been a separate lawsuit*. . . .
>
> * * *
>
> *There's no cross claim in a probate*. . . . The claim came in. It should have been denied. Set for a hearing. And then when you set for a hearing, everybody has notice.

(Resp. App. 51a-52a) (emphasis supplied).

In light of this, the District Court applied a functional test in determining that Chung was a defendant on the "cross-claim". (Pet. App. 9) (citing 16 MOORE'S FEDERAL PRACTICE § 107.11[1][b][i] (3d ed. 1997)). *See also Mason City & Fort Dodge R.R. v. Boynton*, 204 U.S. 570, 580 (1907) (Holmes, J.) (holding that a landowner denominated by state statute as a

plaintiff in a condemnation suit may remove when the actions of the statutory defendant railroad are the "mainspring of the proceedings"). Chung as a defendant, therefore, properly could remove the action which the Executor had erroneously styled a "cross-claim".

3. Each of Chung's co-defendants provided written consent to removal of the "cross-claim".

The Executor argues that Chung's removal was defective because he did not obtain the necessary consents to removal from his co-defendants. The Executor claims that the "informal letters from co-cross-'defendants' or their representatives" did not suffice as consent. (Pet. 13). The requirement of unanimity on removal, however, is a requirement only that:

> there must be some timely filed written indication from each served defendant, or from some person or entity purporting to formally act on its behalf in this respect and to have authority to do so, that it has actually consented to such action.

Getty Oil, Div. of Texaco, Inc. v. Insurance Co. of N. Am., 841 F.2d 1254, 1262 n.11 (5th Cir. 1988). Some courts have not even required that the consents be written. *See, e.g., Collins v. Baxter Healthcare Corp.*, 949 F. Supp. 1143, 1146 (D.N.J. 1996) (cautioning that, in the future, formal expressions of consent should be used but finding consents sufficient when given orally by co-respondents to counsel who filed notice of removal).

Consents are sufficient when the moving party presents

> timely written evidence of joinder or consent from each defendant such as . . . a letter provid[ing] the

> court with a written entry that would unequivocally bind the allegedly consenting defendants.

Michaels v. New Jersey, 955 F. Supp. 315, 320 (D.N.J. 1996). Chung filed written letters from each of the co-defendants consenting to the removal. (Pet. App. 59-64). The fact that David Allen's letter refers to "Hong Kong" rather than to the District Court is immaterial. He is neither a party to the "cross-claim" nor a Real Party in Interest. In any case, the letter merely confirms the parties' written agreement that this dispute would be settled by arbitration in Hong Kong. (Pet. App. 61).

The cases cited by the Executor are not to the contrary. They stand for the proposition that, by itself, an assertion from counsel for the removing party that the co-defendants consent is no substitute for an expression by the co-defendants themselves. *See Martin Oil Co. v. Philadelphia Life Ins. Co.*, 827 F. Supp. 1236, 1237 (N.D.W. Va. 1993) ("The issue presented . . . is whether the rule of unanimity is satisfied when a notice of removal presented by only one defendant represents, without more, that counsel for another defendant consents to the removal"); *Creekmore v. Food Lion, Inc.*, 797 F. Supp. 505, 507 (E.D. Va. 1992) ("The issue raised by Creekmore's motion to remand was whether Food Lion's assertion alone, through its counsel, in its notice of removal that all defendants consented to removal was sufficient . . .").

Chung's co-defendants consented to the removal in writing. Their consents were sufficient. The case was properly removed.

4. Chung did not waive his arbitrable rights by seeking an administrative determination of his claims.

The Executor's assertion that Chung had been "steadily litigating for 26 months in the CNMI courts", (Pet. 14), is a bizarre interpretation of Chung's patience in awaiting the

Executor's decision on his claim to the DHLC shares. Chung filed his Notice of Claim in September 1995. For the next 22 months, Chung waited for the Executor to investigate the claim in the normal course of the probate and to make a decision. For these 22 months, the Executor did not dispute Chung's claim, and Chung did not litigate the claim. On one occasion and at the Executor's request, Chung submitted an affidavit describing the transactions which gave rise to his claims against the Estate. (Resp. App. 158a). From July 1997 until the removal in October 1997 — a period of three months — Chung's response to the Executor's inexcusable delay was to file but not serve the Protective Actions to preserve his claims against the running of the statute of limitations and to answer the Executor's "cross-claim". Chung did not, however, proceed to litigate the "cross-claim"; he served no discovery requests and filed no motions.

In marked contrast to these facts are those of the cases cited by the Executor to support its waiver argument. Each of them involved intense litigation of the claims subject to arbitration for longer than three months. *See, e.g., Hoxworth v. Blinder, Robinson & Co.*, 980 F.2d 912 (3d Cir. 1992) (litigation over eleven months involving depositions of various individuals as well as denial of a motion to dismiss before the defendant moved to compel arbitration); *Van Ness Townhouses v. Mar Indus. Corp.*, 862 F.2d 754 (9th Cir. 1989) (over two years of pre-trial litigation including pleadings, motions, and approval of a pretrial order before moving to compel arbitration).

The only acts of litigation by Chung to which the Executor can point are his filing the Protective Actions and his answering the "cross-claim". Neither act, however, is inconsistent with an intent to arbitrate. *See Britton v. Co-op Banking Group*, 916 F.2d 1405, 1413 (9th Cir. 1990) (failure to assert right to arbitration as affirmative defense does not constitute waiver); *Howard Fields & Assocs. v. Grand Wailea Co.*, 848 F. Supp.

890, 898 (D. Haw. 1993) ("mere acts of filing an answer and taking some limited part in the litigation process do not constitute a waiver of arbitration rights"); *Davis Corp. v. Interior Steel Equip. Co.*, 669 F. Supp. 32, 33-34 (D.D.C. 1987) (filing protective complaint against running of statute of limitations not waiver). As the federal courts have long recognized, where a defendant moves for a stay pending arbitration immediately after removing the action to federal court, the defendant's pre-removal filing of an answer and counterclaim, and even its participation in discovery, do not constitute waiver. *See, e.g., Gavlik Constr. Co. v. H.F. Campbell Co.*, 526 F.2d 777, 783-84 (3d Cir. 1975), *overruled on other grounds, Zosky v. Boyer*, 856 F.2d 554 (3d Cir. 1988). On this record, the Executor cannot carry the "heavy burden of proof . . . to show that an opponent has waived a contractual right to arbitrate." *Walker v. J.C. Bradford & Co.*, 938 F.2d 575, 577 (5th Cir. 1991).

Moreover, the Executor cannot — as it must — demonstrate that it has been prejudiced by Chung's conduct. Its argument for prejudice is that

> Chung's conduct has disrupted the contempt proceedings, interfered with the orderly administration of the Estate, waylaid discovery, squandered the time of both federal and state courts, and wasted assets of the Estate.

(Pet. 14-15). The District Court's answer is dispositive:

> In any event, the chronology set out before this court makes it appear quite likely that, had the Executor responded in a timely fashion to Chung's suggestion that the accountant used by Hillblom and Chung be contacted, and had the Executor dealt with Chung's claim promptly, this matter could have begun

> moving toward resolution long ago. From all that has been presented here, this court is persuaded that procedural maneuvering designed to avoid or wholly negate the substance of Chung's claims has led to the greatest delay.

(Pet. App. 21-22).

C. The Contempt Proceedings Were Necessarily Stayed Because The Sanction Proposed By The Executor Threatened To Eviscerate The Order Compelling Arbitration.

Because the Executor sought by the contempt proceedings a summary dismissal of Chung's arbitrable claims, a stay of those proceedings was necessary for the efficacy of the District Court's orders. In oral argument on the Executor's motion to reconsider the order denying remand, the District Court perceived the threat which the contempt sanctions posed to the court's jurisdiction:

> THE COURT: Well, wouldn't the whole thing be a useless act if this court ordered arbitration and the Superior Court dismissed all claims of Po Chung that were the subject of that arbitration, and then it went to the arbitrator and the arbitrator ruled in Po Chung's favor, then that would have to go back to the Superior Court to go into the estate to be distributed, but the Superior Court would have dismissed all claims and the whole thing would all have been useless, wouldn't it?

(Resp. App. 106a). Because the Executor declined to forego the sanction of dismissal, the District Court found that the contempt proceedings were stayed because "it appeared likely that this court's removal jurisdiction could be impinged upon

and frustrated by simultaneous proceedings in both courts involving Chung." (Pet. App. 21).

The Executor's reliance on *Juidice v. Vail*, 430 U.S. 327 (1977), is misplaced. *Juidice* does not forbid a stay of state contempt proceedings where that stay preserves federal jurisdiction. *See United States v. Michigan*, 712 F.2d 242, 242 (6th Cir. 1983) (affirming district court decision enjoining enforcement of state court contempt orders "inconsistent with rights declared by the federal courts"); *see also Donovan v. City of Dallas*, 377 U.S. 408, 413-14 (1964) (a state court is "without power to take away [a] federal right by contempt proceedings or otherwise"). When contempt proceedings would undermine a federal court's orders, they have been stayed even when the underlying state actions fell outside of federal jurisdiction — such as probate or divorce actions. *See, e.g.*, *Anderson v. Marshall*, 856 F. Supp. 604, 606 (D. Kan. 1994) (staying contempt proceedings in state divorce action because the "relationship between the [ERISA-governed retirement plan], its fiduciaries, and the beneficiaries is directly implicated" by the proceedings); *Complaint of Cosmopolitan Shipping Co.*, 453 F. Supp. 268, 270-71 (S.D.N.Y. 1978) (stay of probate court's imposition of sanctions).

The authority to stay proceedings is even stronger when the parallel state proceedings implicate the federal interest in enforcing arbitration agreements. *See Valentine Sugars, Inc. v. Sudan*, No. Civ. A. 93-3054, 1998 WL 283303, at *5 (E.D. La. 1998) (staying litigation where "state court suit may eviscerate the effect of this court's judgment and orders, render doubtful the rights of the parties, and impair the integrity of the arbitration process"). Where, as here, the state proceedings sought disposition — by dismissal without trial and with prejudice — of the same arbitrable claims which were subject to a federal order compelling arbitration, such parallel adjudication would

have been inimical to the purpose of the New York Convention and was properly stayed. *See Specialty Bakeries, Inc. v. RobHal, Inc.*, 961 F. Supp. 822, 830 (E.D. Pa. 1997) ("integrity of arbitration under the [FAA] constitutes an important federal policy. We do not believe that a contracting party or a state court may act in a way to undercut that policy, where as here a federal court order compelling arbitration has been issued"), *aff'd as modified sub nom. Specialty Bakeries, Inc. v. HalRob, Inc.*, 129 F.3d 726 (3d Cir. 1997). As the court in *Reliance Nat'l Ins. Co. v. Seismic Risk Ins. Servs.*, 962 F. Supp. 385 (S.D.N.Y. 1997), held:

> A federal court in conjunction with an order compelling arbitration . . . may stay a related state court action. Were it otherwise, such an order would be rendered meaningless, since a petitioner would have no choice but to litigate arbitrable claims in a pending action or risk default.

Id. at 390.

D. The District Court Properly Declined To Abstain Because Federal Policy In Favor Of International Arbitration Made Its Duty To Exercise Jurisdiction Paramount.

The Executor seeks an extraordinary writ to compel the District Court to abstain — even though abstention "is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it." *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188 (1959). Here the Executor contends that the District Court should have abstained under *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), because abstention was "reasonably necessary to respect sovereignty and to preserve

. . . our dual sovereignty system." (Pet. 16). But this Court has declined to issue a writ where a

> [p]etitioner has failed to show that the District Court clearly overstepped its authority in holding that the circumstances of this case were not so exceptional as to warrant a stay or dismissal under *Colorado River*.

Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 290 (1988). For the same reason, the Court should deny the writ sought here.

Invoking *Colorado River*, the Executor claims that the District Court should have abstained rather than "interfere with [the CNMI's] constructing a coherent system of probate administration". (Pet. 17). But it makes no showing of interference. The ICC arbitral tribunal will adjudicate a contract dispute between Chung and the Estate. In so doing, it will not establish or undermine any probate procedure. The Executor has seen fit to pursue claims outside the CNMI probate in California, Idaho, and the Philippines without risking disruption of the probate scheme (Resp. App. 178a). The instant dispute can likewise be adjudicated without detrimental effect on that scheme.

While *Colorado River* recognizes that abstention is sometimes proper where federal review would have "an impermissibly disruptive effect on state policy", that ground did not support abstaining in favor of Colorado's complex system for adjudicating water rights because "the mere potential for conflict in the results of adjudications, does not, without more, warrant staying exercise of federal jurisdiction." 424 U.S. at 815, 816. Moreover, the Court noted that "the presence of a federal basis for jurisdiction may raise the level of justification

needed for abstention." 424 U.S. at 815 n.21. In the instant case, Chung removed the "cross-claim" to federal court to invoke his rights to international arbitration. The New York Convention provides a federal basis for jurisdiction; a decision by the District Court declining to exercise its jurisdiction, therefore, would have contravened the

> goal of the [New York] Convention, and the principal purpose underlying American adoption and implementation of it, . . . to encourage the recognition and enforcement of commercial arbitration agreements in international contracts.

Scherk v. Alberto-Culver Co., 417 U.S. 506, 520 n.15 (1974). The powerful federal interest in international arbitration coupled with the duty of a federal court to exercise jurisdiction in a case properly before it demand that the Executor provide evidence establishing a "clear and indisputable" need for the writ. The record is bereft of such evidence.

The parties agreed to arbitration. The District Court compelled arbitration and stayed contempt proceedings which would otherwise have destroyed federal rights. No basis for abstention is presented. The petition should be denied.

CONCLUSION

For the foregoing reasons and those set forth in the opinions of the United States District Court for the Northern Mariana Islands, Real Party in Interest Chung respectfully prays that the Court deny the Executor's petition for a writ of prohibition and/or mandamus.

Respectfully submitted,

CONRAD K. HARPER
Counsel of Record
SIMPSON THACHER & BARTLETT
Attorneys for Real Party in Interest Chung Po Yang
425 Lexington Avenue
New York, New York 10017-3954
(212) 455-2000

Of Counsel:
FREDERICK A. MORTON, JR.
SEAN THOMAS KEELY
SIMPSON THACHER & BARTLETT

APPENDIX

APPENDIX A — AGREEMENT RE: MONTERREY INVESTMENTS LIMITED, DATED DECEMBER 31, 1989

Dated this 31st day of December 1989

CHUNG PO YANG

and

LARRY LEE HILLBLOM

AGREEMENT
Re: Monterrey Investments Limited

Fairbairn Catley Low & Kong,
12/F., Wheelock House
20 Pedder Street
Central, Hong Kong

("AG55654Y.002")

THIS AGREEMENT is made the 31st day of December, 1989

BETWEEN

1. CHUNG PO YANG of Penthouse C and D, 14/F., Carmina Place, 7-9 Deep Water Bay Drive, Hong Kong ("Chung"); and

2. LARRY LEE HILLBLOM of P.O. Box No. 690, Saipan ("Hillblom").

Appendix A

WHEREAS

(1) Monterrey Investments Limited ("the Company") is a company incorporated in the British Virgin Islands and has an authorized capital of US$50,000 divided into 50,000 shares of US$1.00 each of which 490 bearer shares have been issued to the order of each of Chung and Hillblom and 20 bearer shares have been issued to Fanlaw Limited.

(2) Hillblom has agreed to sell and Chung has agreed to purchase all of the shares held to the order of Hillblom ("the Sale Shares") upon the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follow: —

1. Completion of this Agreement shall take place immediately upon the signing hereof whereupon Hillblom will sell and Chung will purchase the Sale Shares for the consideration set out in Clause 2 below ("the Consideration").

2. The Consideration shall be US$226,000,000, payable as follows:

   (a) An initial payment of US$1,400,000 satisfied by a transfer of 83,366 shares in Dumbleton Properties Limited, a Hong Kong company, representing 49% of the outstanding equity of that company, and

   (b) By payment of the balance on demand on or before 30th December, 1990, subject always to Clause 3 below.

   The outstanding balance of the Consideration from time to time shall bear interest at the rate of ten per cent (10%) per

annum from the date of completion to the date such sums are actually satisfied and shall be payable in one lump sum upon the final settlement of the balance of the Consideration.

3. Hillblom shall have an option, exercisable in whole or in part at any time before 30th December, 1990 to acquire such of the assets of the Company or any of its subsidiaries as Hillblom shall designate in whole or partial satisfaction of the amount of the Consideration outstanding and Chung shall take such steps as may be necessary to procure the transfer of such assets within a reasonable time. The value of the assets thereby acquired by Hillblom shall be as agreed between the parties, and in default of agreement determined by an independent auditor appointed jointly, and such value shall be deducted from the balance of the Consideration outstanding.

4. At completion Hillblom will deliver to Chung a bearer share certificate covering the Sale Shares.

5. As security for the payment of US$224,600,000 as aforesaid ("the Outstanding Balance") and interest, Chung will forthwith upon completion deliver to Messrs. Fairbairn Catley Low & Kong of 12th Floor, Wheelock House, 20 Pedder Street, Central, Hong Kong as stakeholder, the bearer share certificate covering the Sale Shares to hold the same upon terms that: —

   (a) the relative share certificate shall be delivered to Hillblom upon the joint certificate of Hillblom and Chung confirming that Chung has failed to pay the Outstanding Balance and interest and releasing the share certificate to Hillblom, or

(b) the relative share certificate shall be delivered to Chung upon the joint certificate of Hillblom and Chung confirming that Chung has paid the Outstanding Balance and interest, and releasing the share certificate to Chung.

(c) Messrs. Fairbairn Catley Low & Kong shall be entitled to nominate Chung to attend and vote at meetings of the Company as holder of the relative bearer share certificate and shall not thereby incur any liability to either of the parties hereto.

6. Notwithstanding anything on this Agreement expressed or implied to the contrary, it is hereby declared and agreed that Hillblom's sole remedy against Chung in respect of any breach or breaches of Chung's obligations under this Agreement including (but without limitation) payment of the Consideration and interest thereon shall be limited to his rights to foreclose on the Sale Shares held as security pursuant to Clause 4 above and the liability of Chung to pay the Outstanding Balance and interest shall be extinguished by such foreclosure.

7. Chung hereby agrees with Hillblom that after completion hereof up to the date upon which the Consideration is paid or the Sale Shares are foreclosed, he will not in the name of or for the account of the Company do or attempt to do any of the following matters or things without the prior written consent of Hillblom or allow any subsidiary of the Company to do any such things: —

(a) dispose of the whole or any material part of the relative company's undertaking or assets;

(b) create or issue or agree to create or issue any share or loan capital;

(c) enter into any joint venture, partnership, long-term or abnormal contract or capital commitment;

(d) pass a resolution for the winding-up of the relative company or do anything whereby it may be wound-up compulsorily;

(e) grant loans including loans to shareholders, directors or employees;

(f) permit the relative company to make any distribution by way of dividend or otherwise;

8. This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the party submit to the non-exclusive jurisdiction of the courts of Hong Kong.

AS WITNESS the hands of the parties the day and year first before written.

SIGNED by CHUNG PO YANG s/ Chung Po Yang
in the presence of:

s/ R.S. Fraser
R.S. Fraser
Solicitor
Fairbairn Catley Low & Kong
11th & 12th Floors, Wheelock House
20 Pedder Street, Hong Kong

Appendix A

SIGNED by MR. LARRY LEE HILLBLOM in the presence of s/ Larry Lee

s/ R.S. Fraser
R.S. Fraser
Solicitor
Fairbairn Catley Low & Kong
11th & 12th Floors, Wheelock House
20 Pedder Street, Hong Kong

APPENDIX B — DHL INTERNATIONAL, LTD./ MIDDLESTOWN, N.V. SHAREHOLDERS' AGREEMENT, DATED DECEMBER 7, 1990

DHL INTERNATIONAL, LTD./MIDDLESTOWN, N.V. SHAREHOLDERS' AGREEMENT

The terms of this Agreement are hereby acknowledged, agreed, and accepted by PO YANG CHUNG ("PYC"), MIDDLESTOWN LIMITED, a Hong Kong corporation ("MTown"), WILLIAM A. ROBINSON ("WAR"), PETER J. DONNICI ("PJD"), L. PATRICK LUPO ("LPL"), and STEPHEN J. SCHWARTZ ("SJS") (hereinafter collectively referred to as "the Parties"). Each of the Parties hereto make promises and agree to the terms as set forth below in reliance upon and in consideration of promises, agreements, and undertakings of each and all of the other Parties hereto.

RECITALS:

A. WHEREAS, Japan Air Lines, Lufthansa German Airlines, and Nissho Iwai corporation ("the New Investors") desire to become investors in DHL International ("DHLI") and Middlestown, N.V. ("MNV"); and

B. WHEREAS, it is anticipated that the New Investors will purchase 12.5% of the shares of DHLI and MNV, for a price of approximately US$56,250,00 from current shareholders of those entities in a transaction expected to close during calender year 1990 ("1990 Transaction") and it is further anticipated that the New Investors will have options (the "1992 Transaction"), exercisable within eighteen (18) months after the close of the 1990 Transaction, to purchase an additional 45.002% of the shares of DHLI and MNV, or an new company ("Newco") to be formed for the purpose of holding the shares and/or assets

of DHLI and MNV, from current shareholders of those entities for a price of approximately US$202,500,000; and

C. WHEREAS, PYC is currently an indirect shareholder of DHLI; Middlestown, Ltd. is an owner of certain shares in MNV; WAR is an owner of certain shares in MNV; and

D. WHEREAS, MTown has performed extraordinary services in developing the business of MNV and in finding and achieving consummation of the previously described Transactions with the New Investors entitling it to share in proceeds of the sale of DHLI stock; and

E. WHEREAS, PJD, LPL, and SJS have performed valuable and extraordinary services in achieving consummation of the previously described Transactions with the New Investors; and

F. WHEREAS, certain assets of DHLI, MNV, and various affiliate companies and entities are being excluded from the Transactions with the intent that such assets will be divested from corporate ownership and transferred to certain shareholders as more fully described herein,

NOW, THEREFORE, IT IS AGREED AMONG THE PARTIES HERETO AS FOLLOWS:

1. The above recitals are incorporated and included herein as part of this Agreement.

2. From the proceeds paid by the New Investors for purchases of shares in connection with the various transactions

identified above, there will be deducted transcaction costs and certain other expenditures as more fully described in Paragraph 3, below. The amount of proceeds after deduction of such costs and expenditures shall constitute the Net Proceeds from each transaction and such Net Proceeds shall be distributed as follows:

PYC	=	66.4518%
MTown, Ltd. (MNV)	=	12.1555%
MTown, Ltd. (Finder Fee)	=	9.7139%
WAR	=	11.6788%
		100.00%

3. The Transaction Costs and Other Expenditures anticipated to be deducted from the gross proceeds and the approximate amount of each will be apportioned among the selling shareholders and paid as shown on the Schedules attached hereto. Exhibit "A", initialed by the Parties, attached hereto and incorporated by reference herein, shows distribution of proceeds following the close of the 1990 Transaction (involving 12.5% sale to new Investors); Exhibit "B", initialed by the Parties, attached hereto and incorporated by reference herein, shows distribution of total proceeds at close of the 1992 Transaction (based on 57.502% sale to new Investors) and includes proceeds distributed under Exhibit "A". The Transaction Costs are as follows:

(A) ***TRANSACTION FEE TO WARBURG.*** PJD was authorized to negotiate for a fee up to .0085% of the proceeds of US$258,750,000 million, or US$2,199,375 million as a total fee for the two transactions described above. Warburg has been paid US$350,000 (plus expenses) by the company; upon closing of the 1990 Transaction, this amount plus an

additional US$400,000 will be reimbursed/paid from proceeds. The remainder of the Warburg fee, US$1,449,375, will be payable only upon the closing of the 1992 Transaction.

(B) ***JOLLIFFE FEE.*** This amount is .005% of the cash proceeds of US$146,250,000 from the Polar group; or US$731,250 as a total fee for the two transactions described above (of this, Jolliffe will be paid US$168,750 at the close of the 1990 Transaction and the balance of US$562,500 will be payable only upon a closing of the 1992 Transaction with the Polar group.

(C) ***DEWEY, BALLANTINE FEES.*** Estimated to be approximately US$2,500,000 for the two transactions described above. This entire fee will be due at the close of the 1990 Transaction, but PJD/SJS will use their best efforts to effect an allocation whereby a portion (30%-35%) of these fees will be borne by the company rather than by the shareholders.

(D) ***ANDERSON, MORI & RABINOWITZ FEES.*** In the approximate amount of US$170,000 for the two transactions described above. This fee has already been paid by the company, but reimbursement will be required from proceeds of the 1990 Transaction.

(E) ***OTHER TRANSACTION COSTS.*** There will, in addition to the above, be costs, such as transfer fees and stamp duty which may be charged

against the sellers. The amount is presently unknown.

(F) ***FEES TO PJD, LPL AND SJS.*** PJD and LPL will receive US$8,437,500 each, including the value of their DHL Corporation stock, and SJS will receive US$2,953,125. These amounts received by PJD, LPL, and SJS shall include their net interests in MRI and Nirada. These amounts will be earned as of the closing of the 1990 Transaction, and 12.5% of the total remuneration they are entitled to will be paid out in cash to each of PJD, LPL, and SJS at that time, with the remainder of their entitlements payable to them as follows:

(1) As to PJD and LPL, contemporaneously with the closing of the 1990 Transaction, they will be paid the amounts showing on Exhibit "A" hereto. The amounts paid out at the closing of the 1990 Transaction for DHLC stock and the amounts paid out as transaction costs will be deducted from the overall remuneration due.

(2) Upon closing of the 1992 Transaction, PJD, LPL, and SJS will be entitled to receive cash payment of 45% of their entitlement as described herein, with the remainder of their entitlement payable in shares of DHLI/MNV or Newco (based on the New Investors' evaluation of DHLI and MNV); if it is not

possible for PJD, LPL, and SJS to own such shares in their own names, then it is hereby agreed by and among the Parties that one or more of the other Parties hereto shall hold their shares for their benefit in trust and PJD, LPL, and SJS shall be entitled to dividends, proceeds from any sale and the right to put their shares as specified in the agreement with the New Investors. Whether or not there is a closing of the 1992 Transaction, PJD, LPL, and SJS shall have a lien equal to the unpaid balance of their entitlement as against the other Parties. In the event of future sales of DHLI/MNV or Newco stock, PJD, LPL, and SJS shall be entitled to receive their proportionate share of proceeds therefrom.

(G) ***PURCHASE OF RICHARD BEE'S INTEREST IN AUSTRALIA.*** Richard Bee has a 10% beneficial ownership interest in DHL Australia which shall be purchased in full either by DHLI or the shareholder parties (from cash proceeds of the transactions). The price for Bee's shares will be based upon the formula of applying the gross revenues of Australia (also including New Zealand, New Guinea and Fiji) as they compare to the gross revenues internationally, times US$450 million. Bee would be paid ten percent (10%) of that amount to reflect his ten percent (10%) interest. The price is estimated at US$1,100,000. If such shares are purchased from the proceeds of this transaction, they shall be held

in trust for the benefit of the shareholder parties in percentages set forth in Paragraph 2, above, of this Agreement.

(H) ***REQUIRED INVESTMENT IN CORP.*** Pursuant to the agreements with the New Investors, the shareholders will be required to contribute to DHLC US$21.25 million as a direct capital investment DHLC.

(I) ***AMOUNT TO MATTAWAN EMPLOYEE TRUST.*** From the portion of the proceeds determined to be due to DHLI and MNV from the transactions, the Parties agree to cash out the Mattawan Employee trust interests. This is estimated to be about US$7 million. The Parties shall use their best efforts to agree whether to make such payments at the closing of the 1990 Transaction or to defer a portion or all of such payment until the closing of the 1992 Transaction.

(J) ***ADDITIONAL BONUS TO EMPLOYEES.*** A fund of US$5 million will be established from proceeds of the 1990 and 1992 Transactions out of which other long-term, loyal employees not participating in the proceeds of the Mattawan Trust will receive gratuities in an amount and at a time to be determined by the Parties. Each Party hereto agrees to submit a list identifying potential recipients of such gratuities on or before July 15, 1990.

(K) ***MINORITY SHAREHOLDERS.*** A portion of the gross proceeds from the transaction will be

used to purchase the proportionate interests of DHL Corporation minority shareholders as set forth in Exhibits "A" and "B" attached hereto. In the aggregate, Messrs. Atwood, Sato, and Camp would receive US$3,600,000 at the close of the 1990 Transaction; and US$13 million at the close of the 1992 Transaction. DHLC stock obtained from proceeds of the Transactions shall be owned and voted in his absolute discretion by a U.S. citizen and any net proceeds from the sale of such stock will be distributed according to the percentages set forth in Paragraph 2, above, of this Agreement.

(L) ***PAYMENT TO THE PRINCE.*** The Prince and other parties involved in the DHLI/MNV business in the Middle East have interests totalling approximately US$30 million. Agreements have been reached for payment of 12.5% of those interests at the close of the 1990 Transaction (payment of US$4 million) and an additional 45.002% at the close of the 1992 Transaction (US$12.5 million). The amounts involved have been projected in Exhibits "A" and "B" hereto.

(M) PJD/LPL/SJS will use their best efforts to negotiate a result whereby DHLI and/or MNV will bear full expense for transaction costs arising from services performed by U.S. and international regulatory counsel, Bain & Co. and Price Waterhouse.

(N) ***CASH INDEMNITY ESCROW FUND.*** At the closing of the 1992 Transaction, a cash escrow fund of US$16 million will be reserved from

proceeds. This cash escrow will decline proportionately over a five (5) year period to zero. As funds are released, they will be distributed to the shareholder parties according to percentages set forth in Paragraph 2, above, of this Agreement.

(O) ***CLAIMS AGAINST PARTIES BY NEW INVESTORS.*** In the event there are claims to be satisfied by the Parties as a result of the terms contemplated by the agreements noted herein, the Parties hereto shall pay said claims in the same ratio as appears in Paragraph 2, above, of this Agreement.

(P) ***CLAIMS RELATING TO THE KNOWLEDGE OF A SINGLE PARTY.*** In the event that there are claims to be satisfied in favor of the New Investors for an act or event caused by PYC, MTown and/or WAR but not disclosed to other Parties, the causing or knowledgeable Party or Parties shall be solely responsible for settling said claim and shall hold the other Parties harmless from any liability for same.

(Q) The Parties shall use their best efforts to obtain policies of liability insurance, purchased from the proceeds of the 1990 Transaction, to cover all of the Parties hereto, including the Trustees of the Woodruffe Trust and the Fountain Trust which owns MTown.

4. Upon closing of the 1992 Transaction, and payment of transaction costs and other expenditures as described above, the Net Proceeds from such transaction will be distributed

according to the percentages set forth in Paragraph 2, above, of this Agreement.

5. Certain assets which are owned by DHLI or MNV and the assets of certain affiliated persons and companies are to be excluded from the Transactions described above. These Excluded Assets or the value thereof are to be distributed to PYC, MTown, and WAR according to the percentages set forth in Paragraph 2, above, of this Agreement and subject to the following provisions:

(a) Certain assets identified in Exhibit "C", initialed by the Parties, attached hereto and incorporated by reference herein are anticipated to be transferred, in whole or in part, from DHLI and MNV to the Parties hereto.

(b) Certain assets identified in Exhibit "D", initialed by the Parties, attached hereto and incorporated by reference herein are presently owned directly or indirectly PYC, MTown, WAR, and/or others.

(c) The assets identified in Exhibits "C" and "D" hereto constitute a full and complete listing of all assets which are or were owned directly or indirectly by or purchased with funds from DHLI, MNV and its affiliate persons or companies and which are to be or have been excluded from certain transactions and agreements with the New Investors signed on or about May 25, 1990. Each Party hereto represents that, to the best of his knowledge, he knows of no other assets or interests of DHLI or MNV or any

affiliate person or entity which are being held by himself or any other Party or person or which has been paid out to himself or any other Party or person other than those assets and interests identified on Exhibits "C" and "D". Any cash payment or other asset previously received by one of the Parties shall be counted toward and deducted from his share of the pool of assets identified on Exhibits "C" and "D". If it is determined that any Party or affiliated person has been unduly enriched by obtaining or withholding more than his agreed share of cash or other Excluded Assets, the value of such undue enrichment shall be withheld from that Party or person's share of proceeds from the 1990 Transaction, if known by the time proceeds of such Transaction are to be distributed, otherwise, from the proceeds of the 1992 Transaction.

(d) Thirty percent (30%) of the Transaction Fees to which PJD and SJS will be entitled to at the close of the 1990 Transaction shall be withheld (unless they do not receive full cooperation from the other Parties hereto and their affiliates) until such time as they devise a workable plan for distribution of the Excluded Assets. Payment of this withheld amount shall be made at such time as PJD and SJS devise such plan and will not be delayed awaiting implementation of the plan.

(e) With respect to the DHLC class "B" shares owned by Nirada Corporation, presently a subsidiary of DHLI, it is understood that Nirada, or such shares owned by Nirada, may be required to be transferred

to a U.S. citizen by virtue of the proposed transaction with the New Investors. It is understood and agreed that upon any liquidation or conversion of such Class "B" shares, the proceeds of same -- in cash or new shares -- shall be paid or conveyed to:

> (1) all DHLC minority U.S. citizen shareholders in proportion to their then current holdings of DHLC Class "A" voting shares and thereafter for the Parties hereto pursuant to the percentages set forth in Paragraph 2, above, of this Agreement; and
>
> (2) the Parties agree to pledge all of said shares in Nirada or the Class "B" shares of DHLC as the case may be, and such other assets transferred by DHLI or MNV to the Parties, as may be required as security for the "Warburg Banking facility" of DHLI.

(f) It is further understood and agreed among the Parties and each of them that PJD will be an intended third party beneficiary hereunder and be entitled to receive, from Exhibit "C," a three percent (3%) ownership interest in Merizo Shores Limited Partnership from DHLI Properties and, from Exhibit "D," cancellation of the debt owned by PJD to The ARW Company for acquisition of the "Donnici Ranch," and a three percent (3%) ownership interest in The ARW Company.

Appendix B

6. With respect to the Board of Directors representation on the Boards of DHLI/MNV or Newco, PYC will be entitled to nominate three Directors and alternatives; WAR and Middlestown, Ltd. shall each be entitled to nominate one Director and alternate.

7. Any dispute, controversy or claim arising out of or relating to this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in Hong Kong (unless the Parties agree to another jurisdiction), in the English language before a sole arbitrator. The Parties shall attempt, by agreement, to nominate the sole arbitrator for confirmation by the ICC Court of Arbitration. If the Parties fail so to nominate a sole arbitrator within thirty (30) days from the date when the claimant's request for arbitration has been communicated to the other Parties, then the claimant Party or Parties shall designate one arbitrator and the responding Party or Parties shall designate one arbitrator and those two arbitrators shall agree on a third arbitrator. The three arbitrators will have the power and authority to make a final decision, non-appealable and binding on the Parties. The law applicable to any such dispute shall be the then-current law of Hong Kong, or if such dispute arises after 1997, the law of Hong Kong as it existed prior to 1997.

8. This Agreement shall be binding upon and shall inure to the benefit of the Parties to this Agreement and their respective legal representatives, successors and assigns, subject, however, to the provisions and exceptions herein contained and provided. The written agreement of all Parties to this Agreement is required for any amendment to this Agreement.

Appendix B

9. If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this Agreement are intended to be and shall be deemed severable. The parties agree to use their best efforts to replace such invalid or unenforceable provision with a valid and enforceable provision having to the maximum extent possible the same economic or practical effect.

10. This Agreement shall be effective by execution of original counterparts.

The above terms are hereby agreed to.

MIDDLESTOWN, LIMITED

By: s/ [illegible]
Its: s/ [illegible] Dated: December 7, 1990

s/ Po Yang Chung
PO YANG CHUNG Dated: December 7, 1990

s/ William A. Robinson
WILLIAM A. ROBINSON Dated: December 7, 1990

s/ Peter J. Donnici
PETER J. DONNICI Dated: December 7, 1990

s/ L. Patrick Lupo
L. PATRICK LUPO Dated: December 7, 1990

s/ Stephen J. Schwartz
STEPHEN J. SCHWARTZ Dated: December 7, 1990

Appendix B

TRANSACTION COSTS	12-1/2%	45%
Warburg	800,000	1,500,000
Jolliffe	170,000	565,000
Dewey, Ballantine	2,000,000	500,000*/
Anderson, Mori & Rabinowitz	175,000	25,000*/
D, L, S (including partial sale of D&L stock in DHLC)	2,480,000	8,925,000
Other Transaction Costs (taxes, stamp duties, etc.)	?	?
R. Bee	1,200,000	
Investment in DHLC	- 0 -	21,250,000
Employee Trust and Bonus	2,000,000	10,000,000
Purchase of DHLC shares from Atwood, Camp & Sato	3,600,000	13,000,000
Notional Interests (Middle East)	4,000,000	12,500,000
Cash Escrow Fund	- 0 -	16,000,000
Liability Insurance Policy	?	?
ESTIMATED TOTALS	$16,425,000	84,265,000

*/ = Estimates
? = Unknown at this time

Appendix B

From: Martin D. Fairbairn to Robert Smit

Bear Proceeds Phase 1(A) #32

Phase One Distribution Estimate at 11/30/90
Corp Value based upon Option

Cash Proceeds	58,250,000	100.00%
Cheiro Sale of 2.5% of Bear Corp	3,125,000	5.56%
Net value of MNV and Intl	53,125,000	
Sale of 12.5% of MNV	13,400,000	23.82%
Mattawan Sale of 12.5% of International	39,725,000	70.62%
Warburg	~~-818,000~~ -0-	
Jolliffe	170,000	
Luxco Costa Dewey Ballantine	~~-1,402,070~~ -0-	
Richard Bee	~~-2,000,000~~	
Stamp Duty	120,000	
Daisey/Alsop		
Sato		
Estimated bonus to key and former employees	~~5,100,000~~	
Transaction costs DL&S	1,498,364	
Estimated cost to buy minority interests in Bear Corp.	4,423,650	
Estimate for Phantom share / Bonus Sponsor Fee	4,000,000	
Total estimated deductions	14,791,696	
Net Proceeds	41,458,304	

Division of proceeds	MLTD	WAR	Mattawan	Cheiro	Total
Corp	0	0	0	3,125,000	3,125,000
MNV	6,834,000	6,566,000			13,400,000
International			39,725,000		39,725,000
Total Gross proceeds	6,834,000	6,566,000	39,725,000	3,125,000	58,250,000
Deductions	1,797,092	1,726,618	10,446,224	821,761	14,791,696
Net	5,036,908	4,839,382	29,278,776	2,303,239	41,458,304

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Bear Proceeds Phase) #32

Appendix B

From Martin D Fairbairn to Robert Smit

Summary		80% distribution
Cheiro	2,303,239	1,842,591
MLTD	5,036,908	4,029,526
Mattawan / Chung *	4,706,636	3,765,309
Mattawan /Hillblom *	23,986,564	19,189,251
Robinson	4,839,382	3,871,505
Subtotal	40,872,728	32,698,183
Mattawan Employee Trust	585,576	468,460
Total	41,458,304	33,166,643

* Estimate of cash to be paid based on amounts due under agreement of December, 1989.

Balance prior to 12/31/90

	MLTD	WAR	Mattawan	Cheiro	Total
80% Preliminary distribution	4,029,526	3,871,505	22,954,560	1,842,591	32,698,183
Adjust per Exhibit D Summary #4 *	1,453,854	495,092	-2,037,322		
			239,343		
Net preliminary distribution	5,483,380	4,366,597	21,156,581	1,842,591	32,698,183
LLH			19,428,594		
PO			1,727,987		
			21,156,581		

	LLH	PO	WAR	MTL/Cheiro
Per Above	19,428,594	1,727,987	4,366,597	7,325,971
Tfr to PO	-1,000,000	1,600,000	-300,000	-300,000
Payoff Loans to ARW /Mattawan	-1,410,550		-60,000	-28,207
Adjustyed distribution 80%	17,018,044	3,327,987	4,006,597	6,997,764

authorized to pay

Division	%	Required Amount	Per Above	Summary %	Under (over)
Allen	.218694	8,938,620	7,340,147	17.96%	1,598,474
Chung	.109774	4,486,763	4,706,636	11.52%	-219,873
Hillblom	.554744	22,673,901	23,986,564	58.69%	-1,312,663
Robinson	.116788	4,773,444	4,839,382	11.84%	-65,938
Trust					
Total	1.000000	40,872,728	40,872,728	100.00%	0

* Excluding Cellular Telephone distribution

S/b 1355.442 - 442.537

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Appendix B

Exh D Summary #5

	A	B	C	D	E	F
1		Total	LLH	Allen	Robinson	Chung
2	Borrowings from DHLI used to buy assets to be repaid					
3	into common pot for distribution according to					
4	agreed upon %s					
5	LLH for Ranch, Bank,Chalet and Kenning Mgmt	4,000,000	4,000,000			
6	Hillblom Loans per attached schedule	1,092,598	1,092,598			
7	Hillblom Ranch Advances	549,699	549,699			
8	DRA for Residence	750,000		750,000		
9	Chung Loans per attached schedule	1,932,001				1,932,001
10	Interst on shareholder loans per attached schedule	3,096,434	2,357,930	337,500		401,004
11	Cellular Telephone proceeds - distributed	1,609,170	1,000,000	200,000	200,000	209,170
12	Partner salaries from7/1/85-12/31/89	6,800,000	1,650,000	1,650,000	1,650,000	1,650,000
13	Total funds received	19,629,902	10,650,227	2,937,500	1,850,000	4,192,175
14	Funds based upon agreed percentages	19,629,902	10,869,570	4,292,942	2,292,537	2,154,853
15	Over (-under).	0	-239,343	-1,355,442	-442,537	2,037,322
16	Cellular Telephone proceeds - distributed on %s	1,735,979	[illegible]	379,648	202,741	190,585
17	Total Funds based upon agreed percentages	21,365,880	11,852,594	4,672,590	2,495,278	2,345,438
18	Funds to be received or (paid out)	0	239,343	1,355,442	442,537	-2,037,322
19						
20	Assets to be divided: (See chart for assets owned through these entities)					
21	Dumbleton Properties **		55.4744%	21.8694%	11.6788%	10.9774%
22	Lady Cynthia		55.4744%	21.8694%	11.6788%	10.9774%
23	Cellular Telephone interests		55.4744%	21.8694%	11.6788%	10.9774%
24	Ali Daham House		55.4744%	21.8694%	11.6788%	10.9774%
25						
26	Other loans to be repaid to companies in group	Total	LLH	Allen	Robinson	
27	To ARW, by: [inlcudes interest]	953,225	953,225			
28	To Mattawan, by: [plus interest]	225,355	165,355		60,000	
29	To Mattawan from Saipan Computer, by: [plus interes	291,970	291,970			
30	To Dumbleton, by: (Cheiros) [plus interest]	28,807		28,807		
31	Total	1,499,357	1,410,550	28,807	60,000	
32						
33						
34						
35						
36		Total	LLH	Allen	Robinson	Chung
37						
38	Percentages					
39	Hillblom		55.4744%	San Juan Cellular Proceeds		
40	Allen	21.8694%			Net Proceeds	[illegible]
41	Robinson	11.6788%			Legal Fees	[illegible]
42	Chung	66.4518%	10.9774%		plus	[illegible]
43	* Loan actually through Wallhigh to be settled when Exhibit C assets released					
44	** Includes interests in Mobile, EMS, Menzo and Whidby Island, SSP Broadcasting, Ulunku,				Overfunded	[illegible]
45	Hui Palolo, ARW, First Skyline and Airborne securities				Net remaining	[illegible]

only Cellular Proceeds

To BR Distribute 7/12/90

APPENDIX C — MONTERREY INVESTMENT AGREEMENT, DATED DECEMBER 7, 1990

MONTERREY INVESTMENT AGREEMENT

The terms of this Agreement are hereby acknowledged, agreed, and accepted by **LARRY L. HILLBLOM** ("LLH") and **PO YANG CHUNG** ("PYC") (hereinafter "the Parties"). Each of the Parties hereto make promises and agree to the terms as set forth below in reliance upon and in consideration of promises, agreements, and undertakings of the other Party hereto.

RECITALS

A. WHEREAS, on December 30, 1989, PYC purchased all of LLH's interest in Monterrey Investment Limited ("Monterrey"), a British Virgin Islands company, and a portion of the payment therefor remains unpaid (the "1989 PYC-LLH Transaction"); and

B. WHEREAS, until such times as LLH has been paid in full, the agreement between PYC and LLH, with regard to Monterrey, grants to LLH the right to approve the terms of sale of assets of Monterrey or its subsidiaries; and

C. WHEREAS, Japan Air Lines, Lufthansa German Airlines, and Nissho Iwai Corporation ("the New Investors") desire to become investors in the various corporate entities, including DHL International ("DHLI"), a second tier subsidiary of Monterrey, upon such terms which have been provided to LLH;

NOW, THEREFORE, IT IS AGREED AMONG THE PARTIES HERETO AS FOLLOWS:

1. The above Recitals are incorporated and included herein as part of this Agreement.

Appendix C

2. Pursuant to the 1989 PYC-LLH Transaction, LLH consents to the sale by Monterrey and/or Mattawan of 12-1/2% of its interest in DHLI to the New Investors as proposed in 1990 (the "1990 Transaction") and to the options for further purchase by the New Investors of 45.002% of DHLI to be exercised in 1992 (the 1992 Transaction") and/or the Newco alternative, as detailed in the agreements provided to LLH, and such other agreements as may be required to carry out the intentions of such agreements. By signing this Agreement, LLH acknowledges that he has read all of the said agreements and is familiar with the terms thereof, including all liens and other restrictions which may be imposed upon the shares and assets of DHLI, Mattawan and Monterrey. LLH consents to the terms and restrictions in the agreements and agrees to be bound by them should he become entitled to any of the shares or assets owned by Monterrey or its subsidiaries.

3. From the proceeds paid by the New Investors for purchases of shares in connection with the 1990 and 1992 Transactions identified above, there will be deducted transaction costs and certain other expenditures, which are related to and incidental to the closings of the 1990 and 1992 Transactions. Pursuant to the 1989 PYC-LLH Transaction, LLH agrees and consents to payment by PYC of these costs and expenditures, including any liens or restrictions on the shares and assets of DHLI, Mattawan and Monterrey. The amount of proceeds after deduction of such costs and expenditures shall constitute the Net Proceeds from each transaction and such Net Proceeds and other assets, including shares of stock shall be used by PYC to discharge his debt to LLH.

4. Pursuant to the 1989 PYC-LLH Transaction, LLH consents to payment of certain legal and transactional fees to be

paid by PYC, including without limitation, amounts in the form of cash and future interests in stock shares to Peter J. Donnici, L. Patrick Lupo and Stephen J. Schwartz who are intended third party beneficiaries hereunder. In addition, pursuant to the 1989 PYC-LLH Transaction, it is anticipated that, and LLH consents to the following:

(a) Certain shares of DHL Australia amounting to approximately ten percent (10%) thereof currently owned by Richard Bee will be purchased from the proceeds of the 1990 and/or the 1992 Transactions and 55.4744% of those shares shall be held in trust or for the benefit of LLH;

(b) Certain proceeds from the 1990 and/or 1992 Transactions will be transferred to LLH for the purpose of purchasing shares from current minority shareholders of DHL Corporation ("DHLC") and for the purpose of making a capital investment in DHLC in the amount of US$21.25 million in exchange for additional shares of DHLC stock. The DHLC shares purchased or obtained by LLH hereunder shall be solely owned by LLH, a U.S. citizen, and voted in his absolute discretion. However, the net proceeds from any future sale of the DHLC shares so acquired by LLH shall be shared by the Parties as follows:

LLH = 55.4744%

PYC = 44.5256%.

Appendix C

(c) In accordance with the 1990 Transaction with the New Investors, the DHLC Class "B" shares currently owned by Nirada Corporation (a wholly owned subsidiary of DHLI) shall be transferred to LLH. Pursuant to the 1989 PYC-LLH Transaction, PYC will cause such DHLC Class "B" shares to be transferred to LLH, at a value to be agreed by PYC and LLH; if such value cannot be agreed, then such value shall be determined by arbitration. Forty-nine percent (49%) of the agreed or arbitrated value shall be deducted from the amounts due LLH from PYC pursuant to the 1989 PYC-LLH Transaction. LLH, a U.S. citizen, will be the sole owner of such DHLC Class "B" shares subject to a pledge or mortgage of such shares to a bank syndicate as security for indebtedness of DHLI to such bank syndicate. Upon any future liquidation of such Class "B" shares or conversion of such shares to Class "A" voting shares, the proceeds--in cash or new shares--shall be paid or conveyed as follows:

(i) to all current minority U.S. citizen DHLC shareholders (excluding the New Investors) in proportion to their then-current holdings of DHLC Class "A" voting shares;

(ii) the remainder shall be shared by the Parties as follows:

LLH = 55.4744%

PYC = 44.5256%.

Appendix C

5. ***CASH INDEMNITY ESCROW FUND.*** At the closing of the 1992 Transaction, a cash escrow fund of US$16 million will be reserved from proceeds. This cash escrow will decline proportionately over a five (5) year period to zero. Pursuant to the 1989 PYC-LLH Transaction, LLH agrees that he will credit PYC with a portion of such amounts which would otherwise have been paid to LLH but which amounts are instead deposited to the cash indemnity escrow fund. Upon release of the indemnity funds, such amounts shall be paid directly to LLH.

6. ***CLAIMS AGAINST PARTIES BY NEW INVESTORS.*** In the event there are claims to be satisfied by the Parties as a result of the terms contemplated by the agreements noted herein, the Parties hereto shall pay said claims in the same ratio as appears in Paragraph 4, above, of this Agreement.

7. ***CLAIMS RELATING TO THE KNOWLEDGE OF A SINGLE PARTY.*** In the event that there are claims to be satisfied in favor of the New Investors for an act or event caused by one of the Parties hereto, that Party shall be solely responsible for settling said claim and shall hold the other Party harmless from any liability for same.

8. Under the terms of the 1990 and 1992 Transactions, PYC will have the right to nominate three (3) Directors to the Board of DHLI and/or Newco. In further protection of LLH's rights under the 1989 PYC-LLH Transaction, it is agreed by the Parties hereto that LLH shall have the right to nominate two (2) of those Directors to such Boards.

9. Any dispute, controversy or claim arising out of or relating to this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of

Commerce ("ICC"). The arbitration shall be conducted in Hong Kong (unless the Parties agree to another jurisdiction), in the English language before a sole arbitrator. The Parties shall attempt, by agreement, to nominate the sole arbitrator for confirmation by the ICC Court of Arbitration. If the Parties fail so to nominate a sole arbitrator within thirty (30) days from the date when the claimant's request for arbitration has been communicated to the other Parties, then each Party shall designate one arbitrator and those two shall agree on a third arbitrator. The three arbitrators will have the power and authority to make a final decision, non-appealable and binding on the Parties. The law applicable to any such dispute shall be the then-current law of Hong Kong, or if such dispute arises after 1997, the law of Hong Kong as it existed prior to 1997.

10. This Agreement shall be binding upon and shall inure to the benefit of the Parties to this Agreement and their respective legal representatives, successors and assigns, subject, however, to the provisions and exceptions herein contained and provided. The written agreement of all Parties to this Agreement is required for any amendment to this Agreement.

11. If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this Agreement are intended to be and shall be deemed severable. The Parties agree to use their best efforts to replace such invalid or unenforceable provision with a valid and enforceable provision having to the maximum extent possible the same economic or practical effect.

Appendix C

12. This Agreement shall be effective by execution in original counterparts.

Dated: December 7, 1990 s/ Po Yang Chung
PO YANG CHUNG

Dated: December 7, 1990 s/ Larry L. Hillblom
LARRY L. HILLBLOM

APPENDIX D — AGREEMENT AS TO ACQUISITION AND DISTRIBUTION OF CERTAIN ASSETS, DATED DECEMBER 7, 1990

AGREEMENT AS TO ACQUISITION AND DISTRIBUTION OF CERTAIN ASSETS

The terms of this Agreement are hereby acknowledged, agreed, and accepted by **LARRY L. HILLBLOM** ("LLH") and **PO YANG CHUNG** ("PYC") (hereinafter "the Parties"). Each of the Parties hereto make promises and agree to the terms as set forth below in reliance upon and in consideration of promises, agreements, and undertakings of the other Party hereto.

RECITALS:

A. WHEREAS, on December 30, 1989, PYC purchased all of LLH's interest in Monterrey Investment Limited ("Monterrey"), a British Virgin Islands company, and a portion of the payment therefor remains unpaid (the "1989 PYC-LLH Transaction"); and

B. WHEREAS, until such times as LLH has been paid in full, the agreement between PYC and LLH, with regard to Monterrey, grants to LLH the right to approve the terms of sale of assets of Monterrey or its subsidiaries; and

C. WHEREAS, Japan Air Lines, Lufthansa German Airlines, and Nissho Iwai Corporation ("the New Investors") desire to become investors in the various corporate entities, including DHL International ("DHLI"), a second tier subsidiary of Monterrey, upon such terms which have been provided to LLH; and

Appendix D

D. WHEREAS, certain assets of DHLI and its parent company, Mattawan Investment Limited ("Mattawan"), are being excluded from the transaction with the New Investors with the intent that such assets will be divested from corporate ownership and transferred to its shareholders and others.

NOW, THEREFORE, IT IS AGREED AMONG THE PARTIES HERETO AS FOLLOWS:

1. The above Recitals are incorporated and included herein as part of this Agreement.

2. Pursuant to the 1989 PYC-LLH Transaction, LLH consents to the sale by Monterrey and/or Mattawan of 12-1/2% of its interest in DHLI to the New Investors as proposed in 1990 (the "1990 Transaction") and to the options for further purchase by the New Investors of 45.002% of DHLI to be exercised in 1992 (the 1992 Transaction") and/or the Newco alternative, as detailed in the agreements provided to LLH, and such other agreements as may be required to carry out the intentions of such agreements. By signing this Agreement, LLH acknowledges that he has read all of the said agreements and is familiar with the terms thereof, including all liens and other restrictions which may be imposed upon assets to be received or retained by Mattawan. LLH consents to the terms and restrictions in the agreements and agrees to be bound by them should he become entitled to any of the assets owned by Monterrey or Mattawan.

3. Certain assets, which are owned by subsidiaries of Monterrey or Mattawan or DHLI, are to be excluded from the transaction with the New Investors. In addition, there are assets which are held either by LLH, PYC or others, which shall be distributed to the Parties and others.

Appendix D

(a) Certain assets of DHLI, identified in Exhibit "A," initialed by the Parties, attached hereto and incorporated by reference herein are anticipated to be transferred in whole or in part to PYC, Mattawan, and/or Monterrey as a result of the Transactions referred to above; pursuant to the 1989 PYC-LLH Transaction, PYC will cause a certain percentage of such assets or their value, as more fully described, below, to be transferred or conveyed to LLH.

(b) Certain assets identified in Exhibit "B," initialed by the Parties, attached hereto and incorporated by reference herein are presently owned directly or indirectly by PYC, Mattawan, LLH, and/or others.

(c) The assets identified in Exhibits "A" and "B" hereto constitute a full and complete listing of all assets which are or were owned directly or indirectly by or purchased with funds from DHLI and/or any affiliate entity and which are to be or have been excluded from certain transactions and agreements with the New Investors signed on or about May 25, 1990. Each Party hereto represents that, to the best of his knowledge, he knows of no other other assets or interests of DHLI or any affiliate person or entity which are being held by himself or any other Party or person or which has been paid out to himself or any other Party or person other than those assets and interests identified on Exhibits "A" and "B". Any cash payment or other asset received by one of the Parties shall be counted toward his share of the pool of assets identified on Exhibits "A" and "B". If

it is determined that any Party has been unduly enriched by obtaining or withholding more than his agreed share of cash or other Excluded Assets, the value of such undue enrichment shall be deducted from his share of the proceeds or value of such assets to which he would otherwise be entitled. If such deduction is impractical or is not sufficient to offset the amount of unjust enrichment, any excess amount thereof shall be withheld from that Party's proceeds from the 1990 Transaction, if known by the time proceeds of such Transaction are to be distributed, otherwise, from the proceeds of the 1992 Transaction.

4. Each Party hereto shall exercise his best efforts to achieve appraisal and evaluation of the assets identified in Exhibits "A" and "B" on or before November 30, 1990.

5. Pursuant to the 1989 PYC-LLH Transaction, and subject to the deductions described in Paragraph 3(c), above, PYC agrees that he will cause to be transferred to LLH a 55.4744% interest in each of said assets or to cause an evaluation to be made and then to divide said assets so that 55.4744% of the agreed net value thereof shall be transferred to LLH as a partial reduction of the obligations of PYC under the 1989 PYC-LLH Transaction.

6. Pursuant to the 1989 PYC-LLH Transaction, and subject to the deductions described above, LLH agrees that he will transfer 44.5256% of any said assets identified in Exhibits "A" and "B" which he holds in exchange for the assets to be transferred by PYC, and that he will pay any debt due by himself and/or The ARW Company or any other company controlled

by LLH to DHLI, its parent or affiliate companies or reduce the amount he shall receive from PYC under the 1989 PYC-LLH Transaction by those amounts.

7. LLH shall cooperate fully if requested by PYC to make the aforesaid transfer of the assets or the equivalent value thereof held by LLH directly to other persons if so directed by PYC.

8. LLH understands and agrees that PYC has agreed with others that for some of the assets to be divided, it is not practical to create undivided interests in the assets but rather that some of the assets will be transferred 100% to others with a credit given or received for the value of said assets.

9. Pursuant to the 1989 PYC-LLH Transaction, with respect to any property which LLH may receive from PYC in payment for the sale of his shares in Monterrey, LLH agrees to accept such property in lieu of cash, subject to such liens for payment to others and subject to such restrictions imposed upon the ownership of said assets as a result of the conditions imposed in the agreements with the New Investors; the value of any such property so received by LLH from PYC shall be agreed by the Parties or, in the absence of such agreement, be resolved through arbitration as provided in Paragraph 10, below.

10. It is further understood and agreed among the Parties and each of them that PJD will be an intended third party beneficiary hereunder and be entitled to receive, from Exhibit "A," a three percent (3%) ownership interest in Merizo Shores Limited Partnership from the shares of that Partnership presently owned by DHLI Properties and, from Exhibit "B," cancellation of the debt owed by PJD to The ARW Company in connection with the acquisition of the "Donnici Ranch" and a three Percent (3%) ownership interest in The ARW Company.

Appendix D

11. Any dispute, controversy or claim arising out of or relating to this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in Hong Kong (unless the Parties agree to another jurisdiction), in the English language before a sole arbitrator. The Parties shall attempt, by agreement, to nominate the sole arbitrator for confirmation by the ICC Court of Arbitration. If the Parties fail so to nominate a sole arbitrator within thirty (30) days from the date when the claimant's request for arbitration has been communicated to the other Parties, then each Party shall designate one arbitrator and those two shall agree on a third arbitrator. The three arbitrators will have the power and authority to make a final decision, non-appealable and binding on the Parties. The law applicable to any such dispute shall be the then-current law of Hong Kong, or if such dispute arises after 1997, the law of Hong Kong as it existed prior to 1997.

12. This Agreement shall be binding upon and shall inure to the benefit of the Parties to this Agreement and their respective legal representatives, successors and assigns, subject, however, to the provisions and exceptions herein contained and provided. The written agreement of all Parties to this Agreement is required for any amendment to this Agreement.

13. If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this Agreement are intended to be and shall be deemed severable. The Parties agree to use their best efforts to replace such invalid or unenforceable provision with a valid and enforceable provision having to the maximum extent possible the same economic or practical effect.

Appendix D

14. This Agreement shall be effective by execution in original counterparts.

Dated: December 7, 1990 — s/ Po Yang Chung
PO YANG CHUNG

Dated: December 7, 1990 — s/ Larry L. Hillblom
LARRY L. HILLBLOM

APPENDIX E — TWO PAYMENT AGREEMENTS

PAYMENT AGREEMENT

THIS PAYMENT AGREEMENT is entered into between CHUNG PO YANG ("CHUNG"), a resident of Hong Kong, and LARRY L. HILLBLOM ("HILLBLOM"), a resident of the Commonwealth of the Northern Mariana Islands, and memorializes prior understandings between the parties.

RECITALS:

WHEREAS, CHUNG and HILLBLOM entered into a contract in December 1989 resulting in CHUNG being indebted to HILLBLOM in an amount in excess of U.S. Two Hundred Twenty-Four Million Dollars (US$224,000,000.00), plus interest (the "Indebtedness"); and

WHEREAS, CHUNG has made payments of the Indebtedness and interest in various forms, including cash and assignments of various assets and rights; and

WHEREAS, some of the payments by assignment require transfers of assets which are subject to conditions preventing transfer at the time of the assignment, and the parties wish to reflect their agreement as to the payment of these assets against the outstanding Indebtedness and interest,

NOW, THEREFORE, and in consideration of the mutual covenants and conditions contained herein, CHUNG and HILLBLOM do covenant and agree as follows:

AGREEMENT:

CHUNG has transferred or assigned payment to HILLBLOM, which HILLBLOM agrees to treat as paid by

Appendix E

CHUNG, US$191,358,524, with US$16,485,640 of said sum being applied towards interest and the balance principal, in December 1990. Said payment being in the form of:

(A) Assignment of 80,000 shares of DHL Corporation Class B common with a beneficial interest in those shares for HILLBLOM in the amount of US$25,724,160.

(B) Assignment of such shares in DHLI or successor entity, the number of which to be determined, which, based upon a total value of DHLI and the international DHL Network of US$450,000,000, will be equal to the amount of US$106,092,000.

(C) Assignment of account due from The ARW Company, U.S.A., in the amount of US$1,289,909.

(D) Assignment of account due from Dumbleton Properties Limited, Hong Kong, in the amount of US$214,426.

(E) Assignment of shares of Dumbleton Properties Limited, Hong Kong, representing a 6.44% interest in said company, in the amount of US$4,355,451.

(F) Assignment of interest in shares of DHL Properties, Inc. or its successor representing a 55.44% interest, in the amount of US$1,171,735.

(G) Assignment of 55.44% interest in land located in Mykonos, Greece, held in the name of a nominee, in the amount of US$1,293,950.

(H) Cancellation of debt to DHL International Limited in the amount of US$1,269,554, less payment deemed made on

debt due to HILLBLOM from Mobile Investment Limited, in the amount of $688,206.

(I) Assignment of funds, upon deposit, to indemnify fund in the amount of US$8,875,904.

(J) Cash in the amount of US$41,757,641.

s/ Larry L. Hillblom
LARRY L. HILLBLOM

_____
CHUNG PO YANG

Appendix E

PAYMENT AGREEMENT

THIS PAYMENT AGREEMENT is entered into between CHUNG PO YANG ("CHUNG"), a resident of Hong Kong, and LARRY L. HILLBLOM ("HILLBLOM"), a resident of the Commonwealth of the Northern Mariana Islands, and memorializes prior understandings between the parties.

RECITALS:

WHEREAS, CHUNG and HILLBLOM entered into a contract in December 1989 resulting in CHUNG being indebted to HILLBLOM in an amount in excess of U.S. Two Hundred Twenty-Four Million Dollars (US$224,000,000.00), plus interest ("the Indebtedness"); and

WHEREAS, CHUNG has made payments of the Indebtedness and interest in various forms, including cash and assignments of various assets and rights; and

WHEREAS, some of the payments by assignment require transfers of assets which are subject to conditions preventing transfer at the time of assignment, and the parties wish to reflect their agreement as to the payment of these assets against the outstanding Indebtedness of interest; and

WHEREAS, the parties have previously agreed as to the treatment of payment by assignment of certain assets made in December 1990 and now wish to agree as the subsequent similar payments made in June 1991,

NOW, THEREFORE, and in consideration of the mutual covenants and conditions contained herein, CHUNG and HILLBLOM do covenant and agree as follows:

Appendix E

AGREEMENT:

1. CHUNG has made various investments in and through DANAO INTERNATIONAL HOLDINGS LIMITED, a British Virgin Islands corporation ("DANAO") doing business in the Republic of Vietnam, with projects in Ho Chi Minh City, Riverside and Dalat, which CHUNG and HILLBLOM agree have a present value of US$40,000,000, which includes CHUNG's obligations to fund said projects, under a certain Joint Venture Agreement entered into with a business partner existing under the laws of the Republic of Vietnam.

2. CHUNG hereby assigns all rights to said holdings in DANAO to HILLBLOM, which assignment shall be deemed payment by CHUNG against the Indebtedness.

3. The aforesaid assignment shall be contingent upon the lifting of the United States Government embargo against the Republic of Vietnam. In the event said embargo is not lifted within (10) years, then this assignment will be null and void, but will not restore HILLBLOM's right to collect any additional Indebtedness from Chung as a result of his inability to complete the transfer. CHUNG shall transfer the above interests upon direction of HILLBLOM at any time after the embargo has been lifted.

4. From and after June 2, 1991, HILLBLOM shall have the full right of participation and direction of the construction of the projects entered into by DANAO, and CHUNG will participate fully in allowing said direction by HILLBLOM. In the event that HILLBLOM does not exercise said right of participation, CHUNG shall continue such direction in such a manner that the project will be completed as understood by the parties.

s/ Larry L. Hillblom
LARRY L. HILLBLOM

_____
CHUNG PO YANG

APPENDIX F — EXCERPTS (PAGES 1, 14, 15, 18) OF PETITION FOR INSTRUCTIONS AND ACTIVITY REPORT BY THE EXECUTOR FOR THE PERIOD APRIL 1, 1998 THROUGH APRIL 30, 1998, DATED MAY 28, 1998

[1] EDUARDO A. CALVO
RODNEY J. JACOB
CALVO AND CLARK
Attorneys at Law
AAA-951
Box 10001
Sablan Building, 2nd Floor
Chalan Kanoa
Saipan MP 96950
TEL (670) 235-2045
FAX (670) 235-2776

KATHLEEN V. FISHER
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
TEL (415) 268-7000
FAX (415) 268-7522

ATTORNEYS FOR BANK OF SAIPAN,
EXECUTOR

IN THE SUPERIOR COURT

OF THE

COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS

CIVIL ACTION NO. 95-626-A

Appendix F

IN THE MATTER OF:

ESTATE OF LARRY L. HILLBLOM,

Deceased.

Date: June 18, 1998

Time: 1:30 p.m.

Judge: Alexandro C. Castro

PETITION FOR INSTRUCTIONS AND ACTIVITY REPORT BY THE EXECUTOR FOR THE PERIOD APRIL 1, 1998 THROUGH APRIL 30, 1998

The Bank of Saipan, as Executor ("Executor"), submits this Petition for Instructions and Activity Report for the Period April 1, 1998, Through April 30, 1998 (the "Petition"). The Executor notes that confidential portions of and certain exhibits to the Petition are being filed under seal concurrently herewith, for the reasons set forth in the Executor's

* * *

[14] informed the executor that Laurel's Philippine Counsel complied with the April 3 Order. Mr. Cassiday is presently in the Philippines securing verification of such compliance. The Executor will promptly file the ancillary probate termination petitions as required by Settlement Agreement ¶ XI.C upon receipt of the required verification.

Appendix F

VII. REPORT AND REQUEST FOR INSTRUCTIONS REGARDING AMENDMENT TO SETTLEMENT AGREEMENT REGARDING DISTRIBUTION OF PERSONAL PROPERTY

In its Comments on Executor's Petition for Instructions and March Activity Report, filed with the Court on May 8, 1998, the Trust recommended distribution of Hillblom's personal property to Terry Hillblom and Grant Anderson as the ancillary probate proceedings are closed, or as structures containing such property are sold. The Executor agreed that such advance distribution would relieve the Estate of expenses associated with maintenance of the personal property, and subject to certain modifications and conditions, the Executor recommended that the parties amend the Settlement Agreement to provide for advance distributions of the personal property. The Court approved the Executor's recommendation and instructed the Executor to prepare such an amendment for the parties' execution and presentation to the Court for approval. The parties discussed the concept of such an amendment during the May Estate Administration Committee meeting in San Francisco attended by counsel for the Heir Claimants and counsel to the Trust. The parties were unable to reach an agreement and will therefore not amend the Settlement Agreement with regard to personal property distributions at this time. However, the Heir Claimants did agree in concept with the amendment, subject to the condition that the Estate would not assume the responsibility of physically delivering and distributing the personal property to Messrs. Hillblom and Anderson.

Appendix F

VIII. REPORT ON CLAIMS AGAINST AND BY THE ESTATE

A. Report on Termination of Schwartz Tolling Agreement

[FILED UNDER SEAL IN CONFIDENTIAL PORTION OF PETITION]

[15] B. Request for Instructions Regarding Po Chung's Probate Claim for $300,000.

On May 24, 1996, Po Chung filed a notice of claim in the Probate Court seeking recovery in the amount of $300,000 plus interest and costs on a loan he allegedly made to the Estate on July 20, 1995. The Executor's position is that Chung's claim is untimely under 8 CMC §2924(b)(1) and should therefore be denied.

Section 2924(b)(1) provides that claims against a descendent's estate which arise at or after the death of the decedent and are based on a contract with the personal representative of the Estate are barred unless brought within 60 days after performance by the personal representatives due. Chung claims to have timely filed his claim on the grounds that he expected that the Executor's performance (i.e. repayment of the alleged loan) was due when the Estate was financially in a position to repay the amount. According to Chung, the Estate could repay the note when it recovered the proceeds of the sale of the Continental Shares it purchased with the $300,000 at issue on May 14, 1996. (*See Letter of Lecia Eason to Richard Pierce* 6-7, October 10, 1996, Exhibit I hereto).

Appendix F

It is the Executor's view that its performance, if due at all, would have been due on demand since no specified time period was ever agreed to by the parties. As such, the performance would have been due as soon as the alleged loan was made, July 20, 1995, and any claim for the $300,000, unless brought within 60 days of July 20, 1995, is barred under §2924(b)(1).

Since Chung did not file his claim within 60 days of July 20, 1995, the Executor requests that the Court deny Chung's claim.

C. Report on Offsets Against Claims of Peter Donnici and Stephen Schwartz

[FILED UNDER SEAL IN CONFIDENTIAL PORTION OF PETITION]

D. Report on ICC Arbitration with Po Chung

The parties to the arbitration are currently negotiating the Terms of Reference. Based on the negotiations to date, the Executor expects that the arbitral proceedings will be

* * *

[18] Dated: May 28, 1998.

s/ Russell K. Snow
RUSSELL K. SNOW
Trust Officer, Bank of Saipan, Executor

Appendix F

Dated: May 28, 1998.

EDUARDO A. CALVO
RODNEY J. JACOB
CALVO AND CLARK

KATHLEEN V. FISHER
MORRISON & FOERSTER LLP

By: s/ Kathleen V. Fisher
KATHLEEN V. FISHER
Counsel for the Bank of Saipan, Executor

APPENDIX G — EXCERPTS (PAGES COVER, 1-2, CERTIFICATE) OF NOVEMBER 10, 1997 TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE ALEXANDRO C. CASTRO, PRESIDING JUDGE, CNMI SUPERIOR COURT

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS

CIVIL ACTION NO. 95-626

IN THE MATTER OF THE ESTATE OF

LARRY LEE HILLBLOM,

Deceased.

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Alexandro C. Castro, Presiding Judge
November 10, 1997

APPEARANCES:

For the Bank of Saipan:	Kathleen Fisher, Esq.
For Petitioner Kinney:	David Lujan, Esq.
For Petitioner Feliciano:	Charles Rotbart, Esq.

Appendix G

[1] SUSUPE, SAIPAN, COMMONWEALTH OF THE N. MARIANA ISLANDS

PROCEEDINGS

November 10, 1997

THE COURT: Go ahead, Ms. Fisher.

MS. FISHER: By the way Your Honor, I should have mentioned ah, but it's been served on counsel and the Executor um-ah did file today an answer and counterclaim in the -- the Superior Court, Mr. Chung's um-ah action in the Superior Court outside of the probate and there was--

THE COURT: Actually, to some extent, I'm a little bit ah disappointed of the Executor because this is a probate. If you look at how this thing started, it's a probate. And then, you give notice to the world, who are the heirs? Do you have any claim? Yes. The claim came in. And then when Mr. Po Chung's claim came in, you, the Executor went out and say, counterclaim or whatever, cross claim or what, and then everything goes in disarray. I mean ah that was the problem.

MR. FISHER: Well, I think there's--

THE COURT: There's a procedural problem that was, I don't know, I would blame it on the Executor because you don't have a cross claim. You file a separate action. Just like when you're gonna get money from somebody else, the Executor will say, may I go and file a lawsuit. So, it should have been a separate lawsuit.

MR. FISHER: Well, as -- as Your Honor knows, it also was [2] a separate lawsuit and it is um-ah both in this court and in Hong Kong and in San Francisco--

THE COURT: No, no, but I mean over here when they file a claim instead, so right now it's kind of stuck in between the rock in a hard place, because we're calling it a probate, yet we're calling it a cross claim. There's no cross claim in a probate.

MS. FISHER: Well, um-ah pretty soon, I think we'll clear that up Your Honor, because the cross claim, of course, is really just to preserve the Estate's right of off-set against Mr. Chung within the probate. And, we felt we needed to do that under the statute of limitations as well. So Mr. Chung didn't claim that his um-ah property was free and clear of whatever the accounting turns up in terms of whether . . . [indiscernible]--

THE COURT: So, the claim came in. It should have been denied. Set for a hearing. And then when you set for a hearing, everybody has notice.

MS. FISHER: Well, we're going to do that with Mr. Chung's claim, but Your Honor, I should say both claims the minute that we clear up this Federal Court business that I think will be cleared up because it's clearly wrong that the Federal Court has anything to do with this probate. And the property in the probate. We have no doubt about that.

Um-ah, but I -- I did wanna let Your Honor know we filed

* * *

Appendix G

[31] MR. LUJAN: Thank you, Your Honor.

***** END OF REQUESTED PORTIONS *****

Saipan, Commonwealth of the)

Northern Mariana Islands)

CERTIFICATE

I, Celina A. Concepcion, of Judicial Services, Plus, do hereby certify and declare under penalty of perjury:

That the foregoing pages contain a true and correct record of the proceedings, except portions noted as indiscernible, had in the foregoing matter before the Honorable Alexandro C. Castro, Presiding Judge, on November 10, 1997, transcribed under my direction and thereafter verified by me to the best of my knowledge and ability;

I further state that I am not of counsel or attorney for any of the parties in the above-named case, nor a relative or employee of such attorney or counsel, nor am I personally interested in the outcome of said cause;

Executed at Saipan, Northern Mariana Islands, this 20th day of Nov. 1997.

s/ Celina A. Concepcion

APPENDIX H — EXCERPTS (PAGES 1-2, 10-11) OF RELEASE AGREEMENT FOR THE SALE OF THE ESTATE'S DHLI SHARES TO DHLI, DATED SEPTEMBER 26, 1997

RELEASE AGREEMENT

THIS RELEASE AGREEMENT (the "Agreement") is made as of September 26, 1997 by and among **DHL INTERNATIONAL LIMITED**, a Bermuda corporation ("DHLI"), **GREENPARK INTERNATIONAL LIMITED**, a British Virgin Islands corporation ("Greenpark"), **CHUNG PO YANG** ("Mr. Chung"), **DEUTSCHE LUFTHANSA AKTIENGESELLSCHAFT**, a Federal Republic of Germany corporation ("Lufthansa"), **LUFTHANSA CARGO AKTIENGESELLSCHAFT**, a Federal Republic of Germany corporation ("Cargo"), **JAPAN AIRLINES COMPANY, LTD.**, a Japanese corporation ("JAL"), **NISSHO IWAI CORPORATION**, a Japanese corporation ("NIC"), **WILLIAM A. ROBINSON** ("Mr. Robinson"), **THE ESTATE OF LARRY LEE HILLBLOM** (the "Estate"), **THE BANK OF SAIPAN AS THE EXECUTOR OF THE ESTATE OF LARRY LEE HILLBLOM** (the "Bank") and **WILLIAM I. WEBSTER AS THE SPECIAL ADMINISTRATOR OF THE ESTATE OF LARRY LEE HILLBLOM** ("Mr. Webster"), DHLI, Greenpark, Mr. Chung, Lufthansa, Cargo, JAL, NIC and Mr. Robinson are sometimes referred to in this Agreement individually as a "DHLI Party" and together as the "DHLI Parties". The Estate, the Bank and Mr. Webster are sometimes referred to in this Agreement individually as an "Estate Party" and together as the "Estate Parties". The DHLI Parties and the Estate Parties are sometimes referred to in this Agreement individually as a "Party" and together as the "Parties".

Appendix H

BACKGROUND

The Estate owns shares in DHLI. In 1996, under a Shareholders' Agreement, DHLI, Greenpark and Mr. Chung gave notice of their intention to exercise rights to repurchase the Estate's DHLI shares. When the Estate failed to sell its DHLI shares to DHLI, Greenpark, Mr. Chung and the other DHLI Parties initiated an arbitration against the Estate Parties in the International Court of Arbitration of the International Chamber of Commerce. Related litigation is also pending in the United States District Court for the Northern Mariana Islands. The Parties are settling that arbitration and lawsuit. As part of that settlement, the Estate is selling all its DHLI shares to DHLI and Greenpark. That sale is closing on the date of this Agreement. As part of that settlement, the Parties are also furnishing certain releases. The purpose of this Agreement is to memorialize those releases and certain related understandings.

* * *

in connection with the settlement referred to in the preamble of this Agreement.

(e) The releases in this Section 3 by Mr. Chung in favor of the Estate Parties and the Estate Affiliates pertain only to actual or potential Claims arising out of or relating to the ICC Arbitration and the Saipan Action up to and including July 7, 1997. The provisions of this Subsection 3(e) shall supersede those of any other subsection of this Section 3. Without prejudice to the generality of the foregoing, nothing in this Section 3 shall be construed to release: (i) any actual or potential Claim by Mr. Chung arising out of any acts or omissions by any of the Estate parties or any of the Estate Affiliates after July

7, 1997, including but not limited to any Claim against the Estate as a result of the Estate's sale of the Shares to DHLI and Greenpark including, but not limited to the recovery of and/or accounting for the proceeds of sale thereof and further damages but expressly excluding the right hereafter to claim restitution or recovery of the Shares themselves; or (ii) any Claim arising out of any existing actions or proceedings issued, filed or asserted in any court anywhere in the world before the date of this Agreement (except to the extent indicated above, the ICC Arbitration or the Saipan Action) and in or to which both Mr. Chung and any of the Estate Parties or Estate Affiliates are parties with written notice at the date of this Agreement including, without limitation the specific Claims identified in Clause (ii) of the last sentence of Subsection 2(e); or (iii) any Claim (including, without limitation any ancillary action or offset) in respect of any matter which is legally revived, renewed or reactivated by any act or omission by any of the Estate Parties or any of the Estate Affiliates described in clause (i) or (ii) of this sentence.

(f) Mr. Chung, the Estate Parties and the Estate Affiliates are preserving all of their rights, arguments and defenses respecting the Claims preserved by the last sentence of Subsection 3(e). Nothing in Subsection 3(e) shall confer or defeat jurisdiction or venue in any court or other forum with respect to any such Claim.

(g) Mr. Chung hereby releases and forever discharges all the DHLI Parties and all the DHLI Affiliates from any and all actual or potential Claims that Mr. Chung might have to any or all of the Shares themselves or that DHLI or Greenpark has any liability to Mr. Chung for having purchased the Shares. Put another way, DHLI and Greenpark will receive the Shares free and clear of any and all Claims by Mr. Chung.

Appendix H

4. *Unknown claims*

Each of the parties acknowledges and agrees that the releases set forth in this Agreement extend not only to all present and known Claims respecting the subject matter of those releases (but not other subject matter), but also to any and all . . .

* * *

APPENDIX I — PO YANG CHUNG'S REQUEST FOR ARBITRATION TO THE INTERNATIONAL COURT OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE, DATED OCTOBER 30, 1997

INTERNATIONAL COURT OF ARBITRATION
OF THE
INTERNATIONAL CHAMBER OF COMMERCE

PO YANG CHUNG,

Claimant,

-against-

ESTATE OF LARRY LEE HILLBLOM and BANK OF SAIPAN as EXECUTOR of the ESTATE OF LARRY LEE HILLBLOM,

Respondents.

REQUEST FOR ARBITRATION

Claimant, Po Yang Chung ("Chung") by his undersigned attorneys, respectfully requests arbitration, pursuant to the ICC Rules of Arbitration, of a dispute between Claimant and Respondents arising out of and relating to several agreements: (1) the Agreement Re: Monterrey Investments Limited, dated December 31, 1989; (2) the Monterrey Investment Agreement, dated December 7, 1990; (3) the Agreement as to Acquisition and Distribution of Certain Assets, dated December 7, 1990; and (4) two April, 1995 Payment Agreements (collectively, "the Agreements"). (A copy of each agreement is annexed, respectively, as Exhibits A through E).

Appendix 1

The following information is provided in accordance with Article 3 of the ICC Rules of Arbitration and is based upon documents and information supplied by or on behalf of Chung.

NATURE OF THE CLAIM

Claimant and Respondents dispute whether Chung has paid amounts due to the Hillblom Estate under the Agreements. On December 31, 1989, Larry Lee Hillblom agreed to sell and Po Yang Chung agreed to buy Hillblom's interest in Monterrey Investments Ltd. ("Monterrey") for US$226,000,000 plus interest. Pursuant to the Agreements, Chung has fully satisfied his payment obligations to Hillblom as he has made complete payment, in assets and cash, of the amount owed. The Executor claims that Chung has not paid the debt and has sued Chung in three different fora on that basis. By this arbitration, Chung seeks an accounting and a declaration that he has fully paid the agreed-upon price for the Monterrey shares by cash and assets in accordance with the arbitration agreements contained in the Agreements.

In the alternative, Claimant seeks an accounting and a declaration that by virtue of the actions taken by the Executor claiming the full amount owed for the Monterrey shares and paid under the Agreements, the Executor has cancelled the consideration for which the cash and appropriated assets were transferred. In that event, the Executor is holding the said cash and assets in trust for Chung and Chung seeks the return of the sums paid and assets delivered or value thereof and for an accounting of profits on the aforesaid, save and except that Chung's claim in respect of the 23,576 DHLI shares sold by the Estate to DHLI and Greenpark on September 26, 1997 is by virtue of a Release Agreement, dated September 26, 1997, confined to monetary value of the said shares and damages.

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THE PARTIES

1. Claimant PO YANG CHUNG is a resident of Hong Kong. All correspondence and notices to Claimant should be delivered to his counsel at the following address:

Conrad K. Harper
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, New York 10017
U.S.A.
Tel: (212) 455-2760
Fax: (212) 455-2502

Benny Yeung
Cheng Yeung & Co.
22nd Floor
Ruttonjee House
11 Duddell Street
Central Hong Kong
Tel: (011) 852-2526-6385
Fax: (011) 852-2810-5559

2. Respondent ESTATE OF LARRY LEE HILLBLOM (the "Hillblom Estate") is the Estate of Larry Lee Hillblom, deceased. At the time of his death, Hillblom was a citizen of the United States, resident in the Commonwealth of the Northern Mariana Islands ("CNMI"), a territory of the United States.

3. Respondent BANK OF SAIPAN is the Executor of the Hillblom Estate. The Bank of Saipan is incorporated under the laws of the CNMI. We have been advised that correspondence to the Bank of Saipan should be addressed to:

Appendix I

Kathleen V. Fisher
Morrison & Foerster
425 Market Street
San Francisco, CA 94105-2482
Tel: (415) 268-7222
Fax: (415) 268-7522

BASIS FOR ARBITRATION AND APPLICABLE LAW

All of the Agreements relate to the amount Chung owed and paid to Hillblom for the Monterrey shares and must be read together. Several of the Agreements under which Chung seeks this arbitration and declaration contain the following arbitration clause:

> Any dispute, controversy or claim arising out of or relating to this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in Hong Kong (unless the Parties agree to another jurisdiction), in the English language before a sole arbitrator. The Parties shall attempt, by agreement, to nominate the sole arbitrator for confirmation by the ICC Court of Arbitration. If the Parties fail so to nominate a sole arbitrator within thirty (30) days from the date when the claimant's request for arbitration has been communicated to the other Parties, then each Party shall designate one arbitrator and those two shall agree on a third arbitrator. The three arbitrators will have the power and authority to make a final decision, non-appealable and binding on the Parties.

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> The law applicable to any such dispute shall be the then-current law of Hong Kong, or if such dispute arises after 1997, the law of Hong Kong as it existed prior to 1997.

See Exhibit B at 7, ¶9; Exhibit C at 7, ¶11. Pre-1997 Hong Kong law governs the dispute. *Id.*

STATEMENT OF CLAIMANT'S CASE

The Agreements and the Accounting

1. On December 31, 1989, Chung and Hillblom executed an Agreement under which Hillblom would sell to Chung his shares of Monterrey, a British Virgin Islands company that was then the holding company of DHL International Ltd. ("DHLI"). Hillblom reserved the option in this agreement to take in specie certain assets then owned by Monterrey, its subsidiaries or related companies at agreed values in satisfaction of the purchase price.

2. Subsequently, Chung and Hillblom entered into four more of the Agreements under which they agreed to, recorded and/or ratified the transfer of assets or cash by Chung in satisfaction, in whole or in part, of the amount owed. Chung entered into the DHL International, Ltd./Middlestown N.V. Shareholders Agreements (the "Distribution Agreement") with other parties. (A copy of this agreement is annexed as Exhibit F.)

3. The genesis of the Agreements and of the agreed-upon asset and cash transfer, as a means to pay the debt, was the anticipated corporate restructuring involved in the newly-formed strategic alliance between DHLI and Japan Air Lines, Lufthansa

Appendix I

German Airlines, Inc. and Nissho Iwai Corporation (the "New Investors") in 1990 and the New Investors' option to purchase a majority interest in DHL International over the following 18 months. As part of the transaction, the New Investors required, *inter alia,* that certain assets belonging to any other DHL company or individual that were not a part of the core courier operation be removed from DHLI.

4. The Agreements reflect Chung's and others' agreement to reorganize as joint ventures among themselves the assets of Monterrey, DHLI and/or their subsidiaries and related companies that were to be excluded from the sale to the New Investors pursuant to the Agreements and any other assets which had been acquired using DHL resources. To create the new joint ventures, they distributed the assets among themselves or their respective corporate entities.

5. Hillblom and Chung also agreed, under the Agreements, that assets excluded from the sale to the New Investors that were held by Chung, Hillblom or others were to be distributed to each other or to others. In further satisfaction of the amount Chung owed to Hillblom for the Monterrey shares, they agreed that: 1) of any DHLI excluded assets of which Chung received a portion, Chung would transfer a percentage to Hillblom; 2) of any excluded assets fully owned by Chung, Chung would give Hillblom a portion; and 3) any property Hillblom received from Chung as payment towards the balance due for the Monterrey shares was accepted by him in lieu of cash.

6. The Agreements also provided that after all transactional costs involved in the DHLI stock sale to the New Investors were paid, Chung could use the portion of the remaining proceeds distributed to him to discharge his debt for the Monterrey shares to Hillblom.

7. In April 1995, Chung, Hillblom and others met in Hong Kong for a period of two or three days to discuss business developments and strategies. Among the topics discussed was Chung's payment for the Monterrey shares under the Agreements and the excess payment Chung made over the entire series of transactions.

8. During this discussion, Chung and Hillblom reviewed one of the Agreements, drafted by the DHL retained advisor, which contained an itemization of certain assets and cash that Chung had transferred to Hillblom as part payment for the Monterrey shares. Both Hillblom and Chung orally agreed to this arrangement. Hillblom later signed the Agreement in Vietnam.

9. Also at the April 1995 meeting, Chung and Hillblom orally agreed to the terms of another of the Agreements under which Chung transferred and assigned all rights to his holdings in Danao International Holdings Limited ("Danao Int'l"). The amount was deemed to be payment by Chung to Hillblom towards the amount Chung owed for the Monterrey shares appropriated for the purposes of the 1989 agreement with effect on June 2, 1991. They also agreed that as a result of Chung's excess payment he should be entitled to retain 10% interest in Danao Int'l.

10. In addition to the payments made under the Agreements, Chung also transferred cash to several of Hillblom's accounts and to third parties acting for Hillblom at various times between 1989 and 1995 in further and complete satisfaction of the debt.

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Chung's Rights to the DHLC Shares Held by the Estate

11. The Agreements also required the transfer of some of the New Investor sale proceeds to Hillblom for the purchase of DHL Corporation ("DHLC") stock. Specifically, the proceeds were to be used (1) to buy DHLC Class "A" stock from then-current minority DHLC shareholders and (2) to make a multi-million dollar investment in DHLC in exchange for newly-issued DHLC Class "A" stock. The Agreements provided that Hillblom would be the sole owner of this DHLC stock. In accordance with the Distribution Agreement to which Chung is a party, any proceeds from future sales of the DHLC stock would be apportioned: 55.4744% to Hillblom, 10.9774% to Chung, 11.6788% to William A. Robinson and 21.8694% to companies nominated by David Allen.

12. Hillblom and Chung also agreed to transfer all DHLC Class "B" stock owned by Nirada Corporation (a wholly owned subsidiary of DHLI) to Hillblom. Forty-nine percent of the agreed value of this stock was to be deducted from the balance Chung owed to Hillblom for payment of the Monterrey shares. Upon any future liquidation or conversion of these shares, a portion of the proceeds was to go to U.S. minority shareholders with the remainder split 55.4744% to Hillblom and 44.5256% to Chung.

13. The Estate currently holds the purchased DHLC Class "A" shares and the formerly Nirada-owned DHLC Class "B" shares described in the Agreements. Chung is entitled to his agreed-upon share of the proceeds from sale or conversion of those shares.

14. Chung's rights to the DHLC shares under the Agreements cannot be disputed. Moreover, his rights are not related to the Estate's claim that Chung has not paid for the Monterrey shares.

Hillblom's Death and the Executor's Breach

15. Shortly after the April 1995 meeting, Hillblom was lost at sea following an airplane crash. The Superior Court of the Commonwealth of the Northern Mariana Islands decreed Hillblom to have died on or about May 21, 1995.

16. Soon thereafter, Chung filed an administrative notice in the probate court concerning the DHLC shares in order to preserve his rights to the shares. Again to preserve his rights and to avoid the statute of limitations bar on these rights, Chung filed a Declaratory Relief action in the Superior Court. Chung's rights to the shares derive from the Agreements and any dispute concerning them is subject to arbitration under these Agreements. The Executor claims Chung does not have such rights and has sued him.

17. Almost one year later on May 7, 1996, the Executor wrote to Chung requesting documentary evidence that Chung had paid the full amount due for the Monterrey shares. Even though he was away from his Hong Kong office at the time, Chung immediately responded to the Executor that he did not keep the records of the transactions but that the Executor should communicate with the jointly retained accountant whose professional responsibilities to Hillblom, Chung and the others included keeping the relevant records.

18. Over the next fourteen months, Chung did not receive another request for information nor did he hear any mention of

the Monterrey transaction from the Hillblom Estate until the Executor sued him in three fora in July 1997.

19. On July 16, 1997, the Executor filed a Cross-Claim against Chung and others in the probate proceedings in the Superior Court in Saipan. As it concerns Chung, the Executor alleged that Chung had not repaid the amount owed for the Monterrey shares. The Executor also sought a declaration as to the Estate's rights and duties arising from "various agreements" between Hillblom and the defendants, including the purchase and distribution of Hillblom's Monterrey shares sold to Chung. These rights are subject to arbitration under the Agreements.

20. In the course of the probate proceedings, the arbitrable issues raised in the Executor's Cross-Claim will be heard. In particular, the Executor seeks to have the probate court divest Chung of his rights -- designated to Chung under the Agreements -- to shares of DHLC Class "A" and Class "B" stock currently held by the Estate.

21. The Executor also sued Chung in Hong Kong. On July 16, 1997, the Executor filed a Writ of Summons in the High Court of Hong Kong, Court of First Instance, against Chung. The Executor requested an amount described as the full amount due for the Monterrey shares.

22. The Executor also brought suit in San Francisco. On July 15, 1997, the Executor filed a Complaint for Declaratory Relief, Constructive Trust and Accounting in the Superior Court of California for the County of San Francisco against Chung. This complaint was filed under seal but upon information and belief, Claimant believes that it is a claim for the same amount owed for the Monterrey shares.

23. As of this date, the Executor has refused to acknowledge that the amount owed for the Monterrey shares has been paid in full.

RELIEF REQUESTED

For the foregoing reasons, Claimant seeks the following relief:

1. An accounting of all payments and transfer of value made by Chung to Hillblom and to the Estate.

2. A declaration that Chung has fully satisfied and overpaid his obligations owing under the Agreements.

3. A judgment declaring that Chung has the right to proceeds from the sale or transfer of his portion of the Class "A" shares of DHL Corporation now held by the Estate in trust for Chung.

4. A judgment declaring that Chung has the right to the proceeds from the sale or transfer of the Class "B" shares DHL Corporation now held by the Estate in trust for Chung.

5. In the alternative, a declaration that the actions taken by the Executor claiming the full amount owed for the Monterrey shares and paid under the Agreements constituted breach of the Agreements and that the Estate is holding the cash and assets transferred by Chung to Hillblom as complete payment for the Monterrey shares in trust for Chung, and that the Estate must pay the value of the said cash and assets as well as an accounting for all profits, save and except that Chung's claim in respect of the 23,576 DHLI shares sold by the Estate to DHLI and

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Greenpark on September 26, 1997 is by virtue of a Release Agreement, dated September 26, 1997, confined to monetary value of the said shares and damages.

6. Preliminary and permanent injunctive relief enjoining Respondents (or anyone acting on their behalf) from transferring, conveying, selling, encumbering, assigning, hypothecating or otherwise disposing of the assets and cash at issue to any entity or person other than Claimant.

7. An award to Claimant of the costs of this arbitration, including but not limited to attorneys' fees.

8. An award of consequential damages for any harm suffered by Claimant as a result of Respondents' breach or anticipatory breach of the Agreements.

9. An award of pre- and post-award interest; and

10. Such other and further relief as the Arbitrator shall deem just and proper.

Dated: New York, New York
October 30, 1997

Appendix I

SIMPSON THACHER & BARTLETT
(A partnership which includes professional corporations)

By: s/ Conrad K. Harper
Conrad K. Harper
Frederick A. Morton, Jr.
Scott M. Kareff
Willow J. Sanchez
425 Lexington Avenue
New York, New York 10017
Tel: (212) 455-2000
Fax: (212) 455-2502

Attorneys for Claimant

CHENG YEUNG & CO.
22nd Floor
Ruttonjee House
11 Duddell Street
Central Hong Kong
Tel: (011) 852-2526-6385
Fax: (011) 852-2810-5559

Attention: Benny Yeung, Solicitor to the Claimant

APPENDIX J — EXECUTOR'S ANSWER AND COUNTERCLAIMS IN CNMI SUPERIOR COURT CIVIL ACTION 97-0781A, DATED NOVEMBER 10, 1997

RICHARD W. PIERCE
WHITE, PIERCE, MAILMAN & NUTTING
P.O. Box 5222
Saipan, MP 96950
Telephone: (670) 234-6547
Facsimile: (670) 234-9537

Attorneys for Defendant Bank of Saipan,
Executor for the Estate of Larry L. Hillblom

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS

CIVIL ACTION NO. 97-0781A

CHEIRO'S CONSULTING CO., WILLIAM A. ROBINSON, AND CHUNG PO YANG

Plaintiffs,

-v-

BANK OF SAIPAN, EXECUTOR FOR THE ESTATE OF LARRY L. HILLBLOM

Defendant.

Appendix J

ANSWER AND COUNTERCLAIM

Now comes the Defendant, Bank of Saipan in its capacity as Executor for the Estate of Larry L. Hillblom ("Executor"), in response to the complaint filed by Cheiro's Consulting Co., William A. Robinson, and Chung Po Yang.

ANSWER

1. Paragraphs 1 through 5 of the Complaint are admitted. Further, it is admitted that this Court has jurisdiction of this action and jurisdiction over the Defendant and the Plaintiffs.

2. In response to Paragraph 6 of the Complaint, it is admitted that Larry Lee Hillblom owned 10,823 Class A Shares and 800,000 Class B Shares of DHL Corporation, Inc., prior to his death and that the A and B shares are now owned by the Estate of Larry L. Hillblom. Otherwise, Paragraph 6 of the Complaint is denied for lack of sufficient information to admit or deny the same.

3. Paragraph 7 of the Complaint is denied for lack of sufficient information to admit or deny the same.

4. In response to Paragraph 8 of the Complaint, it is admitted that Plaintiffs filed a notice of claim to the A and B Shares on or about September 1, 1995, and that such notice of claim was filed within 60 days of the publication of Notice to Creditors in Civil Action No. 95-626, Superior Court for the Commonwealth of the Northern Mariana Islands. Otherwise, the Paragraph is denied.

5. In response to Paragraph 9 of the Complaint, it is admitted that the Executor has failed to acknowledge Plaintiffs' rights to the proceeds of the shares and that a genuine dispute exists

between Plaintiffs and Defendant, which dispute can be resolved by the action initiated by Plaintiffs.

6. Any allegation not specifically admitted in answer to the Complaint is denied.

DEFENSES

7. Plaintiffs fail to state a claim upon which relief can be granted.

8. Chung Po Yang's claims are barred by the doctrine of unclean hands.

9. Chung Po Yang's claims are subject to a set-off for any funds that he owed Larry L. Hillblom and that he now owes the Estate of Larry L. Hillblom ("Estate") for the purchase of Mr. Hillblom's interest in Monterrey Investments Limited.

10. Chung Po Yang's claims are subject to a set off for his interference in effectuating the settlement agreement in the ICC arbitration styled *DHL International Limited, et al. against Estate of Larry L Hillblom, et al.*, ICC Case No. 9047/FMS, and the resulting damages he caused the Estate.

Wherefore, the Executor prays that Plaintiffs be denied a declaration that they collectively or individually have rights to shares in DHL held in the name of the Estate, that Plaintiffs take nothing by their complaint, and that the Defendant be awarded costs of this action and such other relief as the Court deems just and proper.

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COUNTERCLAIM

First Cause of Action Against Counter-Defendant Chung

1. Counter-claimant Bank of Saipan in its capacity as Executor for the Estate of Larry L. Hillblom alleges as follows:

2. The Bank is the Executor for the Estate of Larry L. Hillblom ("Executor"). The Executor has the duty to marshall the assets of the Estate and to administer those assets pending distribution, in accordance with the decrees of the probate court. It is the proper and legal custodian for all real and personal property of Larry L. Hillblom.

3. Counter-Defendant Chung Po Yang is one of the original, direct or indirect shareholders in DHL Corporation ("DHLC") and the DHL international network, entities that Mr. Hillblom founded.

4. Counter-Defendant William A. Robinson is one of the original, direct or indirect shareholders in DHLC and the DHL international network, entities that Mr. Hillblom founded.

5. Counter-Defendant Cheiro's Consulting Company is a Hong Kong corporation that, upon information and belief, had rights to shares in DHLC or the DHL international network.

6. On September 1, 1995, Mr. Chung, Mr. Robinson, and Cheiro's Consulting Company filed claims to 1,118 Class A Shares and 388,160 Class B Shares of stock in DHLC. On May 24, 1996, Mr. Chung filed a notice of claim for the repayment of the sum of $300,000.00, plus interest.

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7. On December 31, 1989, Mr. Chung and Mr. Hillblom entered into a written agreement entitled Agreement Re: Monterrey Investments Limited, which provides that Mr. Hillblom would sell his 49% interest in Monterrey Investments Limited to Mr. Chung for the total sum of $226,000,000.00, with interest to be paid on the outstanding balance at 10% per year.

8. Mr. Hillblom satisfied his contractual obligation by transferring to Mr. Chung his 49% interest in Monterrey Investments.

9. Assuming the accounting shows that there is an amount due the Estate by Mr. Chung, Mr. Chung has not satisfied his contractual obligations under the agreement to pay the amount of $224,600,000.00 with interest due.

10. As a direct and proximate result of the foregoing, the Estate has been damaged in an amount to be determined.

Second Cause of Action Against All Counter-Defendants

Declaratory Relief

11. The Executor realleges and incorporates by reference as if full set forth herein, paragraphs one through ten of this Counterclaim.

12. The Executor is informed and believes, and on the basis of such information and belief, alleges that Mr. Hillblom and one or more of the counter-defendants entered into agreements, including but not limited to An Agreement As to Acquisitions and Distribution Of Certain Assets and the Monterrey Investment Agreement for the purchase and distribution of certain of Mr.

Hillblom's assets and interests, including Monterrey Investments Limited, of which DHLI was a subsidiary. These agreements and others affected Mr. Hillblom's ownership interest in numerous entities, including but not limited to Dumbleton Properties, Electronic Mail System, Danao International Holdings, Ltd., ARW, DHLI, DHLC, ARW, Merizo Shores L.P., First Skyline Corp., Uluniu Shores Ltd., Mobile Investments Ltd., Volcano Point L.P., Nirada Corporation BV, and DHL Properties, Inc., and his interest in cash, dividends, and monies held in escrow.

13. The Executor is informed and believes, and on that basis of such information and belief, alleges that counter-defendants played numerous roles with respect to these entities and assets.

14. An actual controversy has arisen and exists between the Executor and the counter-defendants concerning their respective rights and duties in relation to the above-mentioned agreements and transactions and the assets and ownership they affect.

15. The Executor desires a judicial determination of the Estate's rights and duties and the counter defendants' fights and duties, and a declaration to that effect.

16. Due to the great complexity of the above-transactions, a judicial determination is necessary and appropriate at this time to establish the Estate's rights and duties.

Third Cause of Action Against All Counter-Defendants

Constructive Trust and Accounting

17. The Executor realleges and incorporates by reference as if full set forth herein, paragraphs one through 17 of this Counterclaim.

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18. The Executor is informed and believed, and on the basis of such information and belief, alleges that the counter-defendants herein have received certain assets, ownership interests and distributions, some of which may belong to the Estate.

19. The Executor has requested from the counter-defendants a full accounting or showing by counter-defendants of the sums actually and honestly due the Estate from the counter-defendants. The Executor has requested that the counter-defendants provide the Estate with a statement of all assets, ownership interests, and distributions that it is entitled to, now or in the future, as owner.

20. Counter-defendants, who are in possession of relevant books and records of the transaction with Mr. Hillblom, and the ownership interests and distributions of the entities, have not provided a full accounting or showing in connection with such an accounting concerning the Estate's rights, duties, assets, ownership interests, and distributions.

21. The Executor does not have complete information regarding the assets, ownership interests and distributions to it based on the complex nature of the interests, involving many agreements affecting the ownership of numerous foreign and domestic corporations.

Fourth Cause of Action Against
Counter-Defendant Po Chung

Slander of Title

22. The Executor realleges and incorporates by reference as if full set forth herein, paragraphs one through 21 of this Counterclaim.

23. On July 7, 1997, counter-defendant Po Chung entered into an agreement with the Executor in settlement of the ICC arbitration styled *DHL International Limited, et al. against Estate of Larry L. Hillblom, et al.*, ICC Case No. 9047/FMS. Counter-defendant Po Chung knew that pursuant to the settlement agreement, the Estate and the Executor had to transfer its shares in DHLI to claimants free and clear of all liens and encumbrances.

24. Thereafter, in order to prevent the Executor and the Estate from complying with the terms of the settlement agreement, Po Chung did assert wrongfully and without justification a right to ownership of the DHLI shares held by the Estate.

25. Po Chung's wrongful claim of an interest in the DHLI shares held by the Estate placed a cloud on the title of the Estate's shares in DHLI and caused the Claimants in ICC Case No. 9047/ FMS to delay closing of the transaction. The delay in the closing proximately caused the Estate to lose $612,287.67 in interest on the principal that would have been received from the transaction.

26. Counter-defendant Po Chung acted maliciously and oppressively and with reckless disregard for the rights of the Estate, and he should be punished for that behavior by an award of punitive damages in favor of the Estate.

Wherefore, Counter-plaintiff prays for judgment herein as follows:

1. The Court adjudicate the forgoing counterclaims and enter judgment thereon in an amount to determined by proof;

2. For a declaration of the Estate's and the counter-defendants' rights and duties under the above-mentioned agreements as well as those not specifically mentioned above or

set forth in this counterclaim and not at present known by the Executor that may affect the Estate;

3. For an order declaring that counter-defendants hold assets, ownership interests and past and future distributions in trust for the Estate;

4. For an order compelling the counter-defendants to convey to the Estate the assets, ownership interests, and distributions it is entitled to as described above as well as such interests not specifically mentioned above or set forth in this counterclaim and not at present known by the Executor that may affect the Estate;

5. For an accounting of all monies owned to the Estate as set out above as well as those sums not specifically mentioned above or set forth in this counterclaim and not at present known by the Executor;

6. For costs of suit herein incurred; and

7. For such other relief as the Court deems just and proper.

Dated this 10th day of November, 1997.

WHITE, PIERCE, MAILMAN & NUTTING

s/ Richard W. Pierce
Richard W. Pierce
Attorney for Bank of Saipan, Executor
for the Estate of Larry L. Hillblom

APPENDIX K — EXECUTOR'S ANSWER AND COUNTERCLAIMS IN CNMI SUPERIOR COURT CIVIL ACTION 97-0782B, DATED NOVEMBER 10, 1997

RICHARD W. PIERCE
WHITE, PIERCE, MAILMAN & NUTTING
P.O. Box 5222
Saipan, MP 96950
Telephone: (670) 234-6547
Facsimile: (670) 234-9537

Attorneys for Defendant Bank of Saipan

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS

CIVIL ACTION NO. 97-0782B

CHUNG PO YANG,

Plaintiff,

-v-

BANK OF SAIPAN, EXECUTOR of the ESTATE OF LARRY LEE HILLBLOM,

Defendant.

Appendix K

ANSWER AND COUNTERCLAIM TO PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF

Now comes Defendant, Bank of Saipan, in response to the complaint for declaratory relief filed by Chung Po Yang.

ANSWER

1. Paragraph 1 of the Complaint is admitted.

2. Paragraph 2 of the Complaint is admitted.

3. Paragraph 3 of the Complaint is admitted.

4. Paragraph 4 of the Complaint is admitted, except that Defendant denies that limited partner of Air Partners L.P. ("Air Partners") has corresponding rights to Continental shares and Continental warrants.

5. Paragraph 5 of the Complaint is admitted.

6. Paragraph 6 of the Complaint is denied for lack of sufficient information to admit or deny, although it is admitted that Plaintiff and Defendant engaged in business transactions.

7. Defendant denies Paragraph 7 of the Complaint for lack of sufficient information to admit or deny.

8. Paragraph 8 of the Complaint is admitted.

9. Defendant denies Paragraph 9 of the Complaint for lack of sufficient information to admit or to deny.

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10. Paragraph 10 is denied for lack of sufficient information to admit or deny.

11. In response to Paragraph 11, it is admitted that Peter J. Donnici caused $300,000 for the account of Plaintiff to be transferred to Air Partners for the benefit of the Estate, but otherwise the paragraph is denied.

12. Paragraph 12 of the Complaint is denied, but it is admitted that Defendant received a substantial profit from the additional $300,000 investment in Air Partners.

13. Answering Paragraph 13, Defendant specifically denies that Plaintiff has filed a timely claim.

14. In response to Paragraph 14 of the Complaint, Defendant admits that it has not paid Plaintiff the $300,000, but otherwise the paragraph is denied.

AFFIRMATIVE DEFENSES

Defendant raises the following Affirmative Defense:

1. Failure to state a claim upon which relief can be granted.

2. Plaintiff's claim is barred for failure to timely file a notice of claim in *In re Estate of Larry Lee Hillblom,* Civil Action No. 95-626, Superior Court for the Commonwealth of the Northern Mariana Islands.

3. Plaintiff's claim is subject to a set off as shown in the counterclaim filed herein.

Appendix K

Wherefore, the Bank of Saipan prays that Plaintiff take nothing by his complaint, and that the Defendant be awarded costs and such other relief as the Court deems just and proper.

COUNTERCLAIM

First Cause of Action

1. Counter-claimant Bank of Saipan in its capacity as Executor for the Estate of Larry L. Hillblom alleges as follows:

2. The Bank is the Executor for the Estate of Larry L. Hillblom ("Executor"). The Executor has the duty to marshall the assets of the Estate and to administer those assets pending distribution, in accordance with the decrees of the probate court. It is the proper and legal custodian for all real and personal property of Larry L. Hillblom.

3. Counter-Defendant Chung Po Yang is one of the original, direct or indirect shareholders in DHL Corporation ("DHLC") and the DHL international network, entities that Mr. Hillblom founded.

4. On September 1, 1995, Mr. Chung and others filed claims to 1,118 Class A Shares and 388,160 Class B Shares of stock in DHLC. On May 24, 1996, Mr. Chung filed a notice of claim for the repayment of the sum of $300,000.00, plus interest.

5. On December 31, 1989, Mr. Chung and Mr. Hillblom entered into a written agreement entitled Agreement Re: Monterrey Investments Limited, which provides that Mr. Hillblom would sell his 49% interest in Monterrey Investments Limited to Mr. Chung for the total sum of $226,000,000.00, with interest to be paid on the outstanding balance at 10% per year.

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6. Mr. Hillblom satisfied his contractual obligation by transferring to Mr. Chung his 49% interest in Monterrey Investments.

7. Assuming an accounting shows that there is an amount due the Estate by Mr. Chung, Mr. Chung has not satisfied his contractual obligations under the agreement to pay the amount of $224,600,000.00 with interest due.

8. As a direct and proximate result of the foregoing, the Estate has been damaged in an amount to be determined.

Second Cause of Action

Declaratory Relief

9. The Executor realleges and incorporates by reference as if full set forth herein, paragraphs one through eight of this Counterclaim.

10. The Executor is informed and believes, and on the basis of such information and belief, alleges that Mr. Hillblom and counter-defendant Mr. Chung entered into agreements, including but not limited to An Agreement As to Acquisitions and Distribution Of Certain Assets for the purchase and distribution of certain of Mr. Hillblom's assets and interests, including Monterrey Investments Limited, of which DHLI was a subsidiary. These agreements and others affected Mr. Hillblom's ownership interest in numerous entities, including but not limited to Dumbleton Properties, Electronic Mail System, Danao International Holdings, Ltd., ARW, DHLI, DHLC, ARW, Merizo Shores L.P., First Skyline Corp., Uluniu Shores Ltd., Mobile Investments Ltd., Volcano Point L.P., Nirada Corporation BV,

and DHL Properties, Inc., and his interest in cash, dividends, and monies held in escrow.

11. The Executor is informed and believes, and on that basis of such information and belief, alleges that counter-defendant played numerous roles with respect to these entities and assets.

12. An actual controversy has arisen and exists between the Executor and the counter-defendant concerning their respective rights and duties in relation to the above-mentioned agreements and transactions and the assets and ownership they affect.

13. The Executor desires a judicial determination of the Estate's rights and duties and the counter-defendant's rights and duties, and a declaration to that effect.

14. Due to the great complexity of the above-transactions, a judicial determination is necessary and appropriate at this time to establish the Estate's rights and duties.

Third Cause of Action

Constructive Trust and Accounting

15. The Executor realleges and incorporates by reference as if full set forth herein, paragraphs one through 14 of this Counterclaim.

16. The Executor is informed and believes, and on the basis of such information and belief, alleges that the counter-defendant herein has received certain assets, ownership interests and distributions, some of which may belong to the Estate.

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17. The Executor has requested from the counter-defendant a full accounting or showing by counter-defendant of the sums actually and honestly due the Estate from the counter-defendant. The Executor has requested that the counter-defendant provide the Estate with a statement of all assets, ownership interests, and distributions that it is entitled to, now or in the future, as owner.

18. Counter-defendant, who is in possession of relevant books and records of the transaction with Mr. Hillblom and the ownership interests and distributions of the entities, has not provided a full accounting or showing in connection with such an accounting concerning the Estate's rights, duties, assets, ownership interests, and distributions.

19. The Executor does not have complete information regarding the assets, ownership interests and distributions to it based on the complex nature of the interests, involving many agreements affecting the ownership of numerous foreign and domestic corporations.

Fourth Cause of Action

Slander of Title

20. The Executor realleges and incorporates by reference as if full set forth herein, paragraphs one through 19 of this Counterclaim.

21. On July 7, 1997, counter-defendant Po Chung entered into an agreement with the Executor in settlement of the ICC arbitration styled *DHL International Limited, et al. against Estate of Larry L. Hillblom, et al.*, ICC Case No. 9047/FMS. Counter-defendant Po Chung knew that pursuant to the settlement

agreement, the Estate and the Executor had to transfer its shares in DHLI to claimants free and clear of all liens and encumbrances.

22. Thereafter, in order to prevent the Executor and the Estate from complying with the terms of the settlement agreement, Po Chung did assert wrongfully and without justification a right to ownership of the DHLI shares held by the Estate.

23. Po Chung's wrongful claim of an interest in the DHLI shares held by the Estate placed a cloud on the title of the Estate's shares in DHLI and caused the Claimants in ICC Case No. 9047/ FMS to delay closing of the transaction. The delay in the closing proximately caused the Estate to lose $612,287.67 in interest on the principal that would have been received from the transaction.

24. Counter-defendant Po Chung acted maliciously and oppressively and with reckless disregard for the rights of the Estate, and he should be punished for that behavior by an award of punitive damages in favor of the Estate.

Wherefore, Counter-plaintiff prays for judgment herein as follows:

1. The Court adjudicate the forgoing counterclaims and enter judgment thereon in an amount to determined by proof;

2. For a declaration of the Estate's and the counter-defendant's rights and duties under the above-mentioned agreements as well as those not specifically mentioned above or set forth in this counterclaim and not at present known by the Executor that may affect the Estate;

3. For an order declaring that counter-defendant holds assets, ownership interests and past and future distributions in trust for the Estate;

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4. For an order compelling the counter-defendant to convey to the Estate the assets, ownership interests, and distributions it is entitled to as described above as well as such interests not specifically mentioned above or set forth in this counterclaim and not at present known by the Executor that may affect the Estate;

5. For an accounting of all monies owned to the Estate as set out above as well as those sums not specifically mentioned above or set forth in this counterclaim and not at present known by the Executor;

6. For costs of suit herein incurred; and

7. For such other relief as the Court deems just and proper.

Dated this 10th day of November, 1997.

WHITE, PIERCE, MAILMAN & NUTTING

s/ Richard W. Pierce
Richard W. Pierce
Attorney for Defendant Bank of Saipan

APPENDIX L — NOTICE OF DISMISSAL OF CNMI SUPERIOR COURT CIVIL ACTION NO. 97-0799B, DATED NOVEMBER 10, 1997

RICHARD W. PIERCE
WHITE, PIERCE, MAILMAN & NUTTING
P.O. BOX 5222
Saipan, MP 96950
Telephone: (670) 234-6547
Facsimile: (670) 234-9537

Attorneys for Defendant Bank of Saipan,
Executor for the Estate of Larry L. Hillblom

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS

CIVIL ACTION NO. 97-0799B

BANK OF SAIPAN, EXECUTOR FOR THE ESTATE OF LARRY L. HILLBLOM, deceased

Plaintiff,

-v-

STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON, DAVID R. ALLEN, CHUNG PO YANG, GREENPARK INTERNATIONAL LTD., AND DOES 1-20,

Defendants.

Appendix L

NOTICE OF DISMISSAL

Now comes the Plaintiff, Bank of Saipan in its capacity as Executor for the Estate of Larry L. Hillblom, and dismisses the Complaint pursuant to Rule 41(a), Commonwealth Rules of Civil Procedure. This dismissal is without prejudice.

Dated this 10th day of November, 1997.

WHITE, PIERCE, MAILMAN & NUTTING

s/ Richard W. Pierce
Richard W. Pierce
Attorney for the Bank of Saipan, Executor
for the Estate of Larry L. Hillblom

APPENDIX M — EXECUTOR'S COMPLAINT IN CNMI SUPERIOR COURT CIVIL ACTION 97-0799B, DATED JULY 17, 1997

RODNEY JACOB
CALVO & CLARK
AAA-951, Box 10001
Saipan, MP 96950
Telephone: (670) 235-2045
Fax: (670) 235-2776

On behalf of THE BANK OF SAIPAN, as Executor of the ESTATE OF LARRY LEE HILLBLOM

IN THE SUPERIOR COURT

OF THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Civil Action No.

Bank of Saipan, Executor of the Estate of Larry L. Hillblom, Deceased,

Plaintiff,

v.

Stephen J. Schwartz, Peter J. Donnici, William A. Robinson, David R. Allen, Po Yang Chung, Greenpark International Ltd., and DOES 1-20,

Defendants.

Appendix M

FIRST AMENDED COMPLAINT FOR DAMAGES, DECLARATORY RELIEF, CONSTRUCTIVE TRUST AND ACCOUNTING

[FILED UNDER SEAL]

Plaintiff alleges:

THE PARTIES

1. Plaintiff, Bank of Saipan ("Executor"), as Executor of the Estate of Larry L. Hillblom (the "Estate"), is a corporation with its principal place of business in the Commonwealth of the Northern Mariana Islands. The Bank of Saipan was named as the Executor of the will of Larry L. Hillblom, a domiciliary of Saipan who died in an airplane crash on May 21, 1995. The Supreme Court of the Commonwealth of the Northern Mariana Islands issued an Order admitting the will to probate on July 17, 1995.

2. Defendant Stephen J. Schwartz is an attorney who has performed extensive work for Mr. Hillblom, DHL, DHLI, and the other defendants.

3. Defendant Peter J. Donnici is an attorney who has performed extensive work for Mr. Hillblom, DHL, DHLI, and the other defendants.

4. Defendant William A. Robinson is one of the original shareholders in DHL and DHLI, corporations that Mr. Hillblom founded.

5. Defendant David R. Allen is one of the original shareholders in DHL and DHLI, corporations that Mr. Hillblom founded.

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6. Defendant Po Yang Chung is one of the original shareholders in DHL Corporation (DHL) and DHLI, International (DHLI), corporations that Mr. Hillblom founded.

7. Plaintiff is informed and believes, and on the basis of such information and belief, alleges that defendant Greenpark International Ltd. ("Greenpark") is a Hong Kong corporation, which is a successor to a corporate shareholder of DHL and DHLI. On information and belief, Greepark is an alter ego for David Allen.

8. Defendant DOE 1 through DOE 20, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to plaintiffs. When said true names and capacities are ascertained, plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that plaintiff's damages as herein alleged were approximately caused by such defendants.

FIRST CAUSE OF ACTION

(Against Defendant Chung)

9. Plaintiff realleges and incorporates by reference as if fully set forth herein paragraphs 1-8 of this complaint.

10. On December 31, 1989, Chung and Mr. Hillblom entered into a written agreement entitled Agreement Re: Monterrey Investments Limited, which provides that Mr. Hillblom would sell his 49% interest in Monterrey Investments Limited to Mr. Chung in exchange for $226,000,000, with interest to be paid at 10% per year.

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11. Mr. Hillblom satisfied his contractual obligations by transferring his 49% interest in Monterrey Investments to Mr. Chung.

12. Plaintiff is informed and believes, and on the basis of such information and belief, alleges that Mr. Chung has not satisfied his contractual obligations to repay the amount $226,000,000 with interest due under the Agreement.

13. As a direct and proximate result of the foregoing, the Estate has been damaged.

SECOND CAUSE OF ACTION

(Against All Defendants)

(Declaratory Relief)

14. Plaintiff realleges and incorporates by reference as if fully set forth herein paragraphs 1-13 of this complaint.

15. Plaintiff is informed and believes, and on the basis of such information and belief, alleges that Mr. Hillblom and one or more defendants entered into agreements, including but not limited to An Agreement As To Acquisition And Distribution Of Certain Assets, and the Monterrey Investment Agreement, for the purchase and distribution of certain of Mr. Hillblom's assets and interests, including Monterrey Investment Limited of which DHLI was a subsidiary. These agreements affected Mr. Hillblom's ownership interests in numerous entities, including but not limited to Dumbleton Properties, Lady Cynthia, Electronic Mail Systems, ARW, Merizo Shores LP, First Skyline Corp. Ulumalu Shores Ltd., Mobile Investments Ltd., and Volcano Point LP. Plaintiff is

informed and believes, and on the basis of such information and belief, alleges that defendants played numerous different roles with respect to these companies, including as shareholders or partners, as attorneys for the companies and/or one or more shareholders or partners, as officers and/or directors, and otherwise as employees.

16. An actual controversy has arisen and now exists between the Executor and defendants concerning their respective rights and duties in relation to the above-mentioned agreements and transactions and the assets and ownership interests they affect.

17. The Executor desires a judicial determination of the Estate's rights and duties and the defendant's rights and duties, and a declaration to that effect.

18. Due to the great complexity of the above transactions a judicial declaration is necessary and appropriate at this time to establish the Estate's rights and duties.

THIRD CAUSE OF ACTION

(Against All Defendants)

(Constructive Trust And Accounting)

19. Plaintiff realleges and incorporates by reference as if fully set forth herein paragraphs 1 through 18 of this complaint.

20. Plaintiff is informed and believes, and on the basis of such information and belief, alleges that defendants have received certain assets, ownership interests, and distributions, some of which may belong to the Estate.

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21. The Executor has requested that the defendants convey the appropriate assets and ownership interests to the Estate. In addition, the Estate has sought the distributions both past and future, it is entitled to receive. Defendants have not conveyed the assets, ownership interests, and distributions to the Estate.

22. Since plaintiff's appointment as Executor, plaintiff has requested a full accounting or showing by defendant of the sums actually and honestly due the Estate from the defendant. The Executor has requested that defendants provide the Estate with a statement of all assets, ownership interests and distributions that it is entitled to, now and in the future, as owner.

23. Defendants have not provided the Executor with a full accounting or showing in connection with such an accounting concerning its rights, duties, assets, ownership interests, and distributions.

24. The Executor does not have complete information regarding the assets, ownership interests, and distributions owing to it based on the complex nature of the interests, involving many agreements affecting the ownership of numerous foreign and domestic companies.

FOURTH CAUSE OF ACTION

(Against Defendants Donnici and Schwartz)

(Constructive Trust And Accounting)

25. Plaintiff realleges and incorporates by reference as if fully set forth herein paragraphs 1 through 24 of this complaint.

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26. Plaintiff is informed and believes, and on the basis of such information and belief, alleges that Nirada Corporation BV (Nirada), a Dutch company, owns land in Mykonos, Greece and possibly other assets.

27. Upon information and belief, defendants Schwartz and Donnici hold the shares in Nirada in trust for Mr. Hillblom and others.

28. The Executor has requested that defendants convey the Estate's proportion of the above-described shares to the Estate. Defendants have failed to convey the property to the Estate.

29. The Executor has requested that defendants provide the Estate with a statement of all shares or distributions that the Estate is entitled to as rightful owner of Nirada. Defendants have not provided the Executor with full information concerning its interests.

WHEREFORE, plaintiff prays for judgment herein as follows:

1. The Court adjudicate the foregoing cross-claim and enter judgment thereon in an amount to be determined by proof;

2. For a declaration of the Estate's and the defendants' rights and duties under the above-mentioned agreements as well as those not specifically mentioned above and set forth in this complaint and not as present known by the plaintiff that may affect the Estate;

3. For an order declaring that the defendants hold assets, ownership interests, and past and future distributions in trust for the Estate;

4. For an order compelling defendants to convey to the Estate the assets, ownership interests, and distributions it is entitled to as described above as well as such interests not specifically mentioned above or set forth in this complaint and not at present known by the plaintiff that may affect the Estate;

5. For an accounting of all moneys owned to the Estate as set out above as well as those sums not specifically mentioned above or set forth in this complaint and not at present known by the plaintiff;

6. For costs of suit herein incurred; and

7. For such other and further relief as the court may deem just and proper.

Dated: July 17, 1997.

RODNEY JACOB
CALVO & CLARK

By: s/ Rodney Jacob
Rodney Jacob

Attorneys for Plaintiff
BANK OF SAIPAN, EXECUTOR OF
THE ESTATE OF LARRY L. HILLBLOM

Appendix M

PROOF OF SERVICE

I, Trino Santoyo, am over the age of 18 years, and not a party to this action. Service is made on behalf of CALVO AND CLARK, Attorneys at Law, whose business address is AAA - 951, Box 10001, Saipan, MP 96950.

I hereby certify that on July 17, 1997, I cause true and correct copies of the following documents to be served upon the persons listed on the service list below, hand-delivered directly or their respective secretary or court clerk:

FIRST AMENDED COMPLAINT FOR DAMAGES, DECLARATORY RELIEF CONSTRUCTIVE TRUST AND ACCOUNTING

(for Civil Action No. 97-799B)

[Filed Under Seal]

Confidential Service List

1. Honorable Alexandro C. Castro, Presiding Judge;

Date this 17th day of July, 1997.

s/ Trino Santoyo
Trino Santoyo

APPENDIX N — EXCERPTS (PAGES COVER, 88, CERTIFICATE) OF NOVEMBER 6 AND 10, 1997 TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE ALEXANDRO C. CASTRO, PRESIDING JUDGE, CNMI SUPERIOR COURT

[1] IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS

CIVIL ACTION NO. 95-626

IN THE MATTER OF THE ESTATE OF

LARRY LEE HILLBLOM,

Deceased.

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Alexandro C. Castro, Presiding Judge
November 6 and 10, 1997

APPEARANCES:

For the Bank of Saipan:	Kathleen Fisher, Esq.
For Mr. Po Chung:	Lecia Eason, Esq.
	Conrad K. Harper, Esq.
	Willow Sanchez, Esq.
For Petitioner Kinney:	David Lujan, Esq.
For the Charitable Trust:	Paul Lawlor, Esq.
For the Petitioner Moncrieff:	Randall Fennel, Esq.
For Petitioner Feliciano:	Charles Rotbart, Esq.

* * *

Appendix N

November 10, 1997

[88] THE COURT: The record reflect this is the evening of November 10, 1997, matter to be in court is Civil Action 97-0063 -- no, that's the federal court number.

CLERK: 95-0626.

THE COURT: What's the number for Hillblom?

CLERK: 95-0626.

THE COURT: Okay, Estate of Hillblom. The court is in receipt of a courtesy copy of an order denying Executor's motion to dismiss or remand. Pursuant to that order, the contempt proceeding is also suspended pending a remand or any further notification from the Federal Court pursuant to federal law. Is there any other matters that we should discuss this morning?

MR. HARPER: No, Your Honor.

MS. FISHER: Your Honor with respect to the District Court's order, the Executor would just ah --

THE COURT: I'm not saying I buy it 100% wholesale.

MS. FISHER: Well, the Executor -- I was just gonna say the Executor doesn't buy it even zero percent and we wanted to um-ah let the court and -- and um-ah Mr. Chung's attorneys um-ah know two things. First of all, we do think the order is incorrect and we'll be appealing it or filing a writ to try to address getting --

THE COURT: . . . [indiscernible].

Appendix N

Saipan, Commonwealth of the)

Northern Mariana Islands)

CERTIFICATE

I, Celina A. Concepcion, of Judicial Services, Plus, do hereby certify and declare under penalty of perjury:

That the foregoing pages contain a true and correct record of the proceedings, except portions noted as indiscernible, had in the foregoing matter before the Honorable Alexandro C. Castro, Presiding Judge, on November 6 and 10, 1997, transcribed under my direction and thereafter verified by me to the best of my knowledge and ability;

I further state that I am not of counsel or attorney for any of the parties in the above-named case, nor a relative or employee of such attorney or counsel, nor am I personally interested in the outcome of said cause;

Executed at Saipan, Northern Mariana Islands, this 28th day of November, 1997.

s/ Celina A. Concepcion

APPENDIX O — EXCERPTS (PAGES 1-2, 16-17, 20-21, CERTIFICATE) OF DECEMBER 19, 1997 TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE ALEX R. MUNSON, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

CIVIL ACTION NO. 97-0063

Friday, December 19, 1997
Garapan, Saipan

In re Claim of the Bank of Saipan, EXECUTOR of the ESTATE OF LARRY LEE HILLBLOM,

Claimant,

vs.

CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON, and GREENPARK INTERNATIONAL, LTD.,

Respondents.

(1) EXECUTOR'S MOTION TO STRIKE THE DECLARATION OF CONRAD K. HARPER IN SUPPORT OF RESPONDENT PO YANG CHUNG'S MOTION TO STAY LITIGATION and COMPEL ARBITRATION; (2) MOTION FOR LEAVE TO INTERVENE AS CLAIMANT OF NAOKO IMEONG, Guardian and GUARDIAN Ad Litem of Junior LARRY HILLBROOM; (3) CLAIMANT EXECUTOR BANK OF SAIPAN'S MOTION FOR CLARIFICATION AND RECONSIDERATION OF THE COURT'S ORDER DENYING EXECUTOR'S MOTION TO DISMISS OR REMAND; (4) RESPONDENT PO YANG CHUNG'S MOTION TO STAY LITIGATION and COMPEL ARBITRATION

Appendix O

BEFORE THE HONORABLE ALEX R. MUNSON
CHIEF JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

***APPEARANCES*:**

For Bank of Saipan.: Executor of the Estate of Larry Lee Hillblom:

Richard W. Pierce
WHITE, PIERCE, MAILMAN & NUTTING
P. O. Box 5222
Saipan, MP 96950
Telephone: (670) 234-6547
Facsimile: (670) 234-9537

and

[2] Shirley M. Hufstedler
Seth M. Hufstedler
MORRISON & FOERSTER LLP
555 West Foftj Street
Los Angeles, California 90013-1024
Telephone: (213) 892-5803
Facsimile: (213) 892-5454

For Respondent: Po Yang Chung

Conrad K. Harper
Frederick A. Morton, Jr.
SIMPSON THACHER & BARTLETT
(a partnership which includes professional corporations)
425 Lexington Avenue
New York, New York 10017-3954
Telephone: (212) 455-2000
Facsimile: (212) 455-2502

and

Appendix O

Also Present:

Lecia Eason & Patricia Halsell
Attorneys at Law
2nd Floor, Flametree Office Bldg.
Lower Capitol Hill
P. O. Box 5549
Saipan, MP 96950
Telephone: (670) 322-7840
Facsimile: (670) 322-7843

* * *

[16] thing in connection with what kind of subject matter jurisdiction is given to the court, what is do not. The next case of --

THE COURT: Could I interrupt you for a second?

MS. HUFSTEDLER: Certainly.

THE COURT: That gave the court an awful lot of trouble. If indeed, if we just say for argument sake that the arbitration agreement was properly removed to this court and there was this outstanding contempt of which was -- one of the request was to dismiss all claims of Po Chung, then wouldn't it be a frustration of the whole Federal Removal Statute to be able to remove part of the case and leave in the Superior Court the ability to dispense with the whole matter?

MS. HUFSTEDLER: Well, your Honor, I can understand your concern about the issue, and your concern is very real, but it has nothing to do with a removal statute. If this such a thing comes to pass, it has nothing to do with the removal, has nothing to do

with arbitration. It comes to pass because of the law of judgments and the necessity to obey the commands of the United States Constitution to give full faith and credit to the CNMI Court. That's not a function of removal. It's not a function of disturbing this court's jurisdiction, nor whatever to be sent to arbitration anymore than the fact that there's a frustration of remedy. If I agree to sell you my thoroughbred horse, and you got an order of specific performance, but before the horse is delivered, he has the bad taste to die, too bad. That isn't [17] because the jurisdiction was frustrated; it's because other events have intervened which may reduce the amount of relief which a person seeking relief may ask for. But it is not because there's a frustration of the court's jurisdiction. It happens the other way, too, I might add.

THE COURT: Well, wouldn't the whole thing be a useless act if this court ordered arbitration and the Superior Court dismissed all claims of Po Chung that were the subject of that arbitration, and then it went to the arbitrator and the arbitrator ruled in Po Chung's favor, then that would have to go back to the Superior Court to go into the estate to be distributed, but the Superior Court would have dismissed all claims and the whole thing would all have been useless, wouldn't it?

MS. HUFSTEDLER: Well, unfortunately, that's the way the law of judgments and the law of full faith and credit really works sometimes. Moreover, you're anticipating a problem that doesn't yet exist. The CNMI Superior Court has not issued any kind of sanction. Is it possible that they said the whole thing should be taken away from Po Chung as a sanction for contempt? Yes, it's possible. But your jurisdiction and your limitations on that jurisdiction do not depend in the least upon it. Moreover, of course, I need to talk a little about the law of federal jurisdiction on removal.

Appendix O

THE COURT: Would you like some water?

MS. HUFSTEDLER: Yes, thank you. Although the law of federal . . .

* * *

[20] course, if the court has no subject matter jurisdiction, any order or act by the court in excess of this jurisdiction is absolutely void and, of course, is immediately reviewable by the appellate court.

THE COURT: I agree with you. It just bothers me that we could have part of it removed and the ability of the Superior Court till to dismiss all of his claims that were the subject of what was removed. I guess, I'd feel a lot more comfortable if the estate withdrew their request of the Superior Court to dismiss all claims, because I -- I mean, you make a very persuasive and good argument, counsel, but they seem so intertwined that we can't take them apart.

MS. HUFSTEDLER: Well, you see, you still have to recognize that, despite the extreme nature of your discomfort, that you have no power to do anything about it, because that's contempt. And that's -- what you're concerned about, and understandably, is if the court should exercise the sanction. You know, the Executor can ask for all kinds of things, but the court doesn't necessarily give them what they ask. That's what happens.

THE COURT: Well, but that -- I mean, potentially the court could do that.

MS. HUFSTEDLER: It could. What, that is entirely a matter solely committed to the CNMI Superior Court, not to you at all.

And even though you may be uncomfortable about it, you can't -- but whatever the Executor asks for or even saying "we no longer [21] ask for it" doesn't prevent the court from doing exactly what it wants to subject, of course, to review in the CNMI Supreme Court. So saying that it would be helpful and give you comfort that, if the Executor dismissed really doesn't change the picture; and it doesn't because that's inherent in what is committed entirely to the jurisdiction of the CNMI Superior Court, exercising the power of sovereignty of the Commonwealth and what is committed to your Honor.

The sole such matter jurisdiction is whether to grant or to deny the request for arbitration; that's all that's before you. And it doesn't drag anything else with it on pendent jurisdiction, except that portion of the probate, which is encompassed only by the cross-claim, and nothing else goes along with it; nothing, The question presented to you on the cross-claim is whether you wish to exercise the discretionary jurisdiction that you have to remand those matters which are not part of the arbitration back to the CNMI Superior Court which is, of course, the proper thing to do. There's no federal interest in any of the rest with respect to these other parties. We're not claiming arbitration. Some of them are not even parties to any of these agreements under the contained arbitration clauses, so there's no point in it. Now, of course, if your Honor would be enthusiastic about hearing that slice of the cross-claim, the court can do so and retain jurisdiction because it's within your discretion, but you would want to be quite sure that you did not go beyond the limits of . . .

* * *

Appendix O

COMMONWEATH OF THE)
NORTHERN MARIANA ISLANDS) ss
SAIPAN, MP)
)

I, SANAE N. SHMULL, Official Court Reporter for the United States District Court for the Northern Mariana Islands, do hereby certify:

That the foregoing proceedings in Civil Action No. 97-0063, Bank of Saipan, Executor of the Estate of Larry Lee Hillblom v. Chung Po Yang, Stephen, J. Schwartz, Peter J. Donnici, William A. Robinson, and Greenpark International, Ltd., consisting of 72 pages, was taken down by me stenographically and with a backup tape recording device at the time and place indicated herein.

That the foregoing transcript is a true and correct record of the proceeding transcribed by me to the best of my ability at the request of Attorney Lecia Eason.

I further certify that I am not interested in the events of the action.

IN WITNESS WHEREOF, I have subscribed my name and signature this 5th day of January, 1998.

s/ Sanae N. Shmull
SANAE N. SHMULL
Official Court Reporter

APPENDIX P — LETTER OF SANDRINE COLLETIER OF THE INTERNATIONAL CHAMBER OF COMMERCE TO ALL COUNSEL OF RECORD CONFIRMING THE APPOINTMENT OF THE HONORABLE ANDREW J. ROGERS AS CHAIRMAN OF THE ARBITRAL TRIBUNAL, DATED APRIL 16, 1998

ICC
International Chamber of Commerce
The world business organization

International Court of Arbitration • Cour internationale d'arbitrage

April 16, 1998/ sat/JA

9733/AMW/FMS
PO YANG CHUNG (Hong Kong) v/ 1. ESTATE OF LARRY LEE HILLBLOM (U.S.A.); 2. BANK OF SAIPAN as EXECUTOR of the ESTATE OF LARRY LEE HILLBLOM (U.S.A.)

Counsel in charge of the file : Fernando Mantilla-Serrano (Phone : 33 1 49 53 28 51)

Conrad K. Harper and Frederick A. Morton, Jr., Esqs.
Willow J. Sanchez and Sean Keely, Esqs.
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, N.Y. 10017-3954
U.S.A. *By SAGA*

Eric A. Schwartz and Rolf B. Johnson, Esqs.
Salans Hertzfeld & Heilbronn
9, Rue Boissy d'Anglas
75008 Paris
France *By RRRR*

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Kathleen V. Fisher, Esq.
Morrison & Foerster LLP.
425 Market Street
San Francisco, CA 94105-2482
U. S. A.

By SAGA

Dear Madam, Dear Sirs,

The Secretariat is pleased to inform you that, in the above-referenced matter, the International Court of Arbitration, at its session of April 15, 1998, confirmed the Hon. Andrew J. Rogers, Q.C. as Chairman of the Arbitral Tribunal upon joint proposal of the coarbitrators.

Please find enclosed the Statement of Independence and resumé of the Hon. Andrew J. Rogers, Q.C.

In conformity with Article 9(3) of the ICC Rules of Arbitration and Article 2.b of Appendix III of the Rules, the transmittal of the file to the Arbitral Tribunal will occur only after the payment of one-half of the advance on costs fixed by the Court at US$ 250,000.000, subject to later readjustments.

The Secretariat acknowledges receipt of US$ 60,500 from the Claimant. Respondents have, to date, not made any payment.

The Secretariat therefore invites the Respondents to effect payment within **15 days** from the day following the date of receipt of this letter, of their US$ 62,500.00 share.

Sincerely yours,

s/ Sandrine Colletier
Sandrine Colletier
Assistant Counsel
Secretariat of the International Court of Arbitration

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Enc.: Resumé and Statement of Independence of the Hon. Andrew J. Rogers, Q.C.

c/c:

- The Hon. Andrew J. Rogers, Q.C. (by Fax No. 00 61 2 92 33 29 68)
- Mr. Neil Kaplan, Q.C. (by Fax No. 00 85 2 28 69 63 72)
- Lord Neill of Bladen, Q.C. (by Fax No. 00 44 171 583 91 27)
- Benny Yeung, Esq. (by Fax No. 00 852 28 10 55 59)

APPENDIX Q — TERMS OF REFERENCE AGREED BETWEEN THE BANK OF SAIPAN AS EXECUTOR FOR THE ESTATE OF LARRY LEE HILLBLOM AND PO YANG CHUNG IN INTERNATIONAL CHAMBER OF COMMERCE INTERNATIONAL COURT OF ARBITRATION CASE NO. 9733/AMW/FMS

SHH
SALANS HERTZFELD & HEILBRONN
AVOCATS A LA COUR

I. Rue Boissy D'Anglas
73008 Paris

Tel 33(0)1 42 68 48 00
Fax 33(0)1 42 68 15 45
Palais - Yoque N P0373

June 5, 1998

By fax
Conrad K. Harper, Esq.
Simpson, Thacher & Bartlett
425 Lexington Avenue
New York, New York 10017
U.S.A.

Re: ICC case No. 9733/AMW/FMS
Po Yang Chung v. Estate of Larry Lee Hillblom and Bank of Saipan as Executor of the Estate of Larry Lee Hillblom

Dear Conrad:

I refer to your fax on May 29, 1998 to the Chairman of the Arbitral Tribunal and the attached draft Terms of Reference, as well as the Chairman's fax of yesterday. The Defendants accept the draft, subject only to minor corrections on pages 3, 7-9 and 11-12, and the addition of Defendants' request for an award of pre- and post-award interest, as indicated on the pages herewith. Also, to

take account of the changes in this latest draft regarding William A. Robinson and "companies nominated by David Allen" in Sections III.2.(xvii) and IV.2.(vi), Defendants have made additions to Sections III.3, and IV.1.

As regards possible hearing dates, I confirm that Defendants are available on October 26-27. Defendants also are prepared to accept the Chairman's suggestion that Claimant submit its brief on jurisdiction first, to which Defendants will thereafter respond within 30 days.

Sincerly yours,

s/ [illegible]
Eric A. Schwartz

Encl.

cc: Prof. the Hon. Andrew J. Rogers, Q.C.
Lord Neill of Bladen, Q.C.
Neil Kaplan, Q.C.
Fernando Mantilla-Serrano, Esq.
Russell K. Snow, Esq.
Kathleen V. Fisher, Esq.

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INTERNATIONAL CHAMBER OF COMMERCE

INTERNATIONAL COURT OF ARBITRATION

CASE No. 9733/AMW/FMS

TERMS OF REFERENCE

Issued pursuant to Article 13 of the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

I. THE PARTIES

1. The Claimant:

Po Yang Chung ("Chung")

2. The 1st Defendant:

Estate of Larry Lee Hillblom ("Hillblom")
c/o The Bank of Saipan Trust Department
P.O. Box 5844
Saipan MP 96950
USA

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3. The 2nd Defendant:

Bank of Saipan as Executor of the Estate of Larry Lee Hillblom
The Bank of Saipan Trust Department
P.O. Box 5844
Saipan MP 96950
USA

II. ADDRESSES OF PARTIES TO WHICH NOTIFICATIONS AND COMMUNICATIONS ARISING IN THE COURSE OF THE ARBITRATION MAY VALIDLY BE MADE

1. For and on behalf of the Claimant:

Conrad K. Harper and Frederick A. Morton Jr. Esqs.
Willow J. Sanchez and Sean Keely Esqs.
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, NY 10017-3954
USA
Tel: +1 212 455 2760
Fax: +1 212 455 2502

Benny Yeung
Cheng Yeung & Co.
11 Duddell Street
Central, Hong Kong
Tel: +852 2526 6385
Fax: +852 2810 5559

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2. For and on behalf of the 1st and 2nd Defendants:

Eric A. Schwartz and Rolf B. Johnson Esqs
Salans Hertzfeld & Heilbronn
9 rue Boissy d'Anglas
75008 Paris
France
Tel: +33 1 42 68 48 00
Fax: +33 1 42 68 15 45

Kathleen V. Fisher, Carl Anduri and
Maria Chedid, Esqs.
Morrison & Foerster LLP
425 Market Street
San Francisco,
CA 94105-2482 USA
Tel: +1 415 268 6000
Fax: +1 415 268 7522

1. All written notifications or communications between the parties or between the parties and the ICC or Tribunal shall be sent by facsimile wherever practicable, on the same day. Notifications or communications with the Tribunal shall be sent to all three arbitrators and to the parties' Counsel at the above addresses. Notifications or communications to one or more arbitrators should be sent to all three arbitrators and to the parties' Counsel.

2. Notifications or communications are deemed to be received on a day if received before 18.00 hours local time on that day.

3. Copies of all correspondence between the parties and the arbitral tribunal, and *vice versa*, should be sent to the Secretariat of the ICC Court.

4. The arbitrators and Counsel and/or parties should notify immediately all parties to and signatories of the present Terms of Reference and the Secretariat of the ICC Court of any change of names, description, address, telephone or facsimile number. Failing such notification, communications in accordance with the above provisions shall be valid.

III. SUMMARY OF THE PARTIES' RESPECTIVE CLAIMS

1. The purpose of the following summary is to satisfy the requirements of Article 13(l)(c) of the ICC Rules, without prejudice to any other or further allegations, arguments or contentions contained in the pleadings or submissions already filed and in such submissions as will be made in the course of this arbitration.

2. The Claims of the Claimant

(i) By agreement ("Monterrey I" Agreement) bearing date 31 December 1989 Hillblom agreed to sell to Chung his shares in Monterrey Investments Ltd. ("Monterrey"), the then holding company of DHL International Ltd ("DHLI").

(ii) The purchase price was US $226,000,000 payable by an initial payment of US $1,400,000

and the balance on demand on or before 30 December 1990.

(iii) Under the agreement Hillblom reserved the option to take in specie assets of Monterrey, its subsidiaries or related companies in satisfaction of the whole or part of the balance of the purchase price.

(iv) By the agreement Chung agreed that he would not, without the prior written consent of Hillblom, dispose of the whole or any material part of Monterrey's undertaking or assets prior to the payment of the balance of the purchase price.

(v) Thereafter Chung and Hillblom entered into two further agreements dated December 7, 1990 and respectively entitled "Monterrey Investments Agreement" ("the Monterrey II Agreement") and "Agreement as to Acquisition and Distribution of Certain Assets" ("the Distribution Agreement") which were entered into pursuant to and in performance of the Monterrey I Agreement and by which Hillblom:

(a) approved the future performance by Chung of all of the agreements which Chung had entered into with the consent of Hillblom for the sale of shares in DHL International Ltd. ("DHLI") to certain new investors ("the New Investors") and

for the collateral reorganization of assets to be excluded from DHLI, and

(b) consented to the terms and restrictions in the agreements and agreed to be bound by them should he become entitled to any of the shares or assets owned by Monterrey.

(vi) The cash to be paid by Chung to Hillblom in payment of the purchase price of the Monterrey Shares was to be derived from the proceeds of the said sale of shares in DHLI ("the Proceeds of Sale") to the New Investors.

(vii) One of the agreements which Hillblom approved as above and by the terms and restrictions of which he agreed to be bound was a further agreement dated December 1990 entitled "DHL International, Ltd./ Middlestown BV Shareholders Agreement" ("the Shareholders Agreement") which contained detailed provisions for the above-mentioned sale of shares and reorganization of assets, many of which provisions were repeated in the Monterrey II Agreement and the Distribution Agreement.

(viii) Each of the Monterrey II Agreement, the Distribution Agreement and the Shareholders Agreement contained an arbitration clause requiring "any dispute, controversy or claim

arising out of or relating to this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce" ("ICC").

(ix) The Claimant claims that in April 1995 at a meeting in Hong Kong, Chung and Hillblom reviewed an Amortization Schedule prepared by the executives jointly retained by Chung, Hillblom, David R. Allen and William A. Robinson (together "the Participants") and supervised by Hillblom which set out what purported to be a complete and accurate account of the assets transferred and cash paid by Chung to or to the account or by the order of Hillblom.

(x) Consequent upon such review it was recognized and agreed by both Hillblom and Chung that:

(a) Chung had overpaid Hillblom; but that

(b) Subject to the transfer of shares in the Vietnam project referred to below, the parties should treat the account between them as settled and that neither party owed anything further to the other.

(xi) Under the Monterrey I Agreement, the Executor's sole remedy, in the event of Chung's breach of his obligations, is limited

to its rights to foreclose on the Monterrey shares.

(xii) The transfer of shares forming the condition of the aforesaid settlement was Chung's transfer of shares representing 90% of the paid up capital of Danao International Holdings Ltd., a company incorporated in British Virgin Islands which owned Hillblom's Vietnam project.

(xiii) At the April 1995 meeting, Hillblom and Chung reviewed two further agreements requested by Hillblom to support his tax returns relating to the transaction to U.S. and/or CNMI Internal Revenue Service(s), which agreements recited and recorded the transfer of certain assets and the timing of their appropriation under the agreements. Those agreements were both described as Payment Agreements.

(xiv) The Payment Agreements were not signed at the April 1995 meeting in Hong Kong because Hillblom stated that he wished to verify that they accorded with his reporting requirements. Hillblom subsequently signed them, apparently in Vietnam.

(xv) Chung agreed under the Shareholders Agreement with the other Participants and separately under the Monterrey II Agreement with Hillblom that a portion of the Proceeds of Sale would be used:

(a) to purchase certain "A" shares in the stock of DHL Corporation ("DHLC") from the minority shareholders therein; and

(b) to subscribe to $21.25 million of new stock in DHLC.

(xvi) In the event, with the agreement of all of the Participants (including Hillblom) and the New Investors, the amount subscribed for new stock in DHLC was $29,250,066.

(xvii) It was agreed in the Shareholders Agreement and in the Monterrey II Agreement that certain of those shares should be held by Hillblom to be owned and voted as his own but that the proceeds of sale thereof should be shared between them in the proportions 55.4744% to Hillblom and 44.5256% to Chung, totalling 100%. Certain shares were not purchased and held by Hillblom, but instead were purchased directly by Robinson and Cheiro's. From said 100%, and in accordance with the said Agreements, the proceeds should be shared as follows: 55.4744% to Hillblom, 10.9774% to Chung, 11.6788% to William A. Robinson and 21.8694% to companies nominated by David R. Allen.

(xviii) It was further agreed in the Shareholders Agreement and in the Monterrey II

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Agreement that all of the "B" shares in the capital of DHLC would be transferred to Hillblom who would own and vote them as his own but, upon any sale or conversion thereof, the proceeds of such sale or conversion would be used to pay a proportion thereof to the minority shareholders in DHLC and thereafter be shared in the proportions therein agreed, namely: 55.4744% to Hillblom and 44.5256% to Chung, totaling 100%. From said 100%, and in accordance with said Agreements, the proceeds should be shared as follows: 55.4744% to Hillblom, 10.9774% to Chung, 11.6788% to William A. Robinson and 21.8694% to companies nominated by David R. Allen.

(xix) The Estate has sold and been paid the majority of the proceeds of sale of all of the aforesaid "A" and "B" shares in DHLC but has refused or failed to pay to Chung what is due to him for the benefit of himself and those to whom Chung is required to account.

(xx) The Claimant seeks:

(a) an accounting of all payments and transfers of value made by Chung to Hillblom and to the Estate;

(b) a declaration that Chung has fully satisfied and overpaid his obligations

owing under the Agreements and that Hillblom received all cash and assets he was entitled to receive under the Agreements;

(c) an accounting of all purchases by Hillblom of Class A and Class B stock or shares in DHLC and all funds transferred to Hillblom for that purpose, an award declaring that Chung and others (whether directly or through Chung) are entitled to receive and be paid a proportion of the proceeds of sale of the class A shares of DHLC received by the Estate and an order for payment by the Estate to Chung of all sums so due to Chung for the benefit of himself and/or others pursuant to the Agreements.

(d) an award declaring that Chung has the right to proceeds from the sale or transfer of the class B shares of DHL Corporation now held by the Estate in trust for Chung;

(e) in the alternative a declaration that the actions taken by the Executor claiming the full amount owed for the Monterrey shares and paid under the Agreements constituted breach of the Agreements and that the Estate is holding the cash and assets transferred by Chung to

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Hillblom as complete payment for the Monterrey shares in trust for Chung and that the Estate should restore the cash and assets to Chung or pay to Chung the value of the said cash and assets as well as an accounting for all profits save and except that Chung's claim in respect of 23,576 DHLI shares sold by the estate to DHLI and Green Park on 26 September 1997 is by virtue of a release agreement dated 26 September 1997 confined to monetary value of the said shares and damages;

(f) preliminary and permanent injunctive relief enjoining the Defendants or anyone acting on their behalf from transferring, conveying, selling, encumbering, assigning, hypothecating or otherwise disposing of the assets and cash at issue to any entity or person other than Claimant;

(g) an award to Claimant of the costs of this arbitration including but not limited to attorneys' fees;

(h) an award of consequential damages for any harm suffered by the Claimant as a result of Defendants' breach or anticipatory breach of the Agreements;

(i) an award of pre- and post-award interest; such further and other relief as

the arbitrators shall deem just and proper.

3. **The claims of the Defendants**

(i) The Tribunal has no jurisdiction to entertain the Claimant's claims.

(ii) There is no agreement requiring the Defendants to arbitrate the claims made by the Claimant and/or that any entitlement to arbitration (which is denied) has been waived.

(iii) The only provision for arbitration is in the two agreements each dated 7 December 1990 and headed Restructuring Agreement as to Acquisition and Distribution of Certain Assets and Monterrey Investment Agreement, neither of which is the agreement upon which Claimant's claim is based.

(iv) The Defendants deny that the whole complex of agreements entered into between the parties can be lumped together so as to invoke the arbitration clause in the two agreements which contain such provision.

(v) The Defendants put in issue whether the two documents headed Payment Agreements which are undated actually constitute agreements between the parties.

(vi) The Defendants put in issue whether the document headed Agreement as to

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Acquisition and Distribution of Certain Assets was executed by Hillblom.

(vii) The Defendants point to the multiplicity of court actions to which Chung and the Estate have been parties and which involved claims grounded upon the obligation of Chung to pay the purchase price for the Monterrey shares and say that in none of them did Chung allege or rely upon his alleged right to arbitrate the claims that are the subject of this arbitration.

(viii) Without prejudice to their claim of absence of jurisdiction, the Defendants deny that Chung has satisfied his obligations under the Agreements upon which he relies in his Request for Arbitration, that any actions taken by Defendants to enforce Chung's obligations under the Agreements, to obtain an accounting of all payments and transfers of value made by Chung to Hillblom or to the Estate, or to demand full payment have been wrongful or that such actions have had or could have had the effect of breaching or cancelling any contract between the parties, that Chung is entitled to retain an interest in Danao International Holdings Ltd. or Beaubien Corporation or that Chung is otherwise entitled to any of the relief sought in the Request.

(ix) The Tribunal has no jurisdiction to determine alleged interests or claims of individuals or

entities that are not a party to this arbitration, including William A. Robinson and "companies nominated by David Allen."

(x) The Defendants seek:

(a) that the Tribunal find it is without jurisdiction to decide Chung's claims and accordingly reject both his claims and the relief sought;

(b) in the alternative and without prejudice to (a) above an accounting of all payments and transfers of value made by Chung to Hillblom and to the Estate, a declaration as to Chung's remaining obligations under the 31 December 1989 Agreement, if any, a declaration as to Chung's entitlement to an interest, if any, in Danao International Holdings Ltd. and Beaubien Corporation, and a declaration as to any rights he may or may not have to the proceeds from sales of DHLC shares held or formerly held by the Estate, an award in the amount of Chung's remaining obligations under the 31 December 1989 Agreement, and an award directing Chung to transfer to the Estate the interest he is currently holding in Danao International Holdings Ltd. and Beaubien Corporation;

(c) an award of Defendants' costs of the arbitration in accordance with Article 20 of the ICC Rules of Arbitration; and

(d) such other and further relief as the Tribunal may determine to be just and proper;

(e) an award of pre- and post-award interest;

(f) Defendants reserve the right to make counterclaims if the Tribunal should decide that it has Jurisdiction to proceed with this arbitration.

IV. DEFINITION OF ISSUES TO BE DETERMINED

1. Jurisdictional Issues

The Tribunal will determine as Jurisdictional Issues:

(i) Is there any provision, which is binding on the Defendants, for arbitration of the claims submitted by the Claimant or any of them, and if so, which.

(ii) Has the entitlement of the Claimant, if any, to have arbitrated all or any of his claims been waived, and if so, which ones.

(iii) Whether the Tribunal has jurisdiction to determine all or any of the claims made by the Claimant, and if so, which ones.

(iv) Does the Tribunal have jurisdiction to determine the alleged interests or claims of

individuals or companies that are not a party to this arbitration, including William A. Robinson and "companies nominated by David Allen?"

2. **Substantive Issues**

If, and only to the extent that it finds that it has jurisdiction to do so, the Tribunal will determine as Substantive Issues:

(i) Has Chung underpaid or fully satisfied and/or overpaid his obligations:

(a) for the purchase of the shares in Monterrey;

(b) under the agreements entered into between the parties.

(ii) Did Hillblom receive all cash and assets to which he was entitled under the Agreements.

(iii) Is Chung entitled to any interest in Danao International Holdings Ltd. or Beaubien Corporation.

(iv) By its actions has the Executor cancelled the consideration for which the cash and appropriated assets were transferred by or at the direction of Chung to Hillblom.

(v) If the answer to (iii) above is in the affirmative, is the Executor holding the said cash and assets or any of them in trust for Chung or

is Chung holding cash and assets in trust for the Estate.

(vi) In the event of Chung's breach of his obligations, is the Executor's sole remedy, pursuant to Monterrey I Agreement, limited to its rights to foreclose on the Monterrey shares.

(vii) Did Chung and Hillblom agree that any proceeds from future sales of the DHLC A shares would be apportioned: 55.4744% to Hillblom, 10.9774% to Chung, 11.6788% to William A. Robinson and 21.8694% to companies nominated by David Allen and how many of such A shares encumbered by that agreement did Hillblom actually acquire.

(viii) Did Chung and Hillblom mutually covenant that they would procure the payment of 7.2% of the proceeds of sale of the DHLC B shares owned by Hillblom to the minority holders of A shares therein (excluding Lufthansa, JAL and Nissho Iwai) and that Chung should be entitled to receive and be paid by the Estate 44.5256% of such proceeds for the benefit of himself, William A. Robinson and companies nominated by David R. Allen in agreed proportions.

(ix) Which party shall bear and in what proportion the parties' costs of the arbitration including the fees and expenses of any experts and legal fees.

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V. THE ARBITRATORS' FULL NAMES, DESCRIPTIONS AND ADDRESSES

Chairman

Prof. the Hon. Andrew J. Rogers Q.C.
Level 7
233 Macquarie Street
Sydney
New South Wales 2000
Australia
Tel: +612 9233 3027
Fax: +612 9233 2968

Arbitrator nominated by the Claimant

Mr. Neil Kaplan Q.C.
Suite 1601
Bank of East Asia Building
10 Des Voeux Road
Central, Hong Kong SAR
China
Tel: +852 2869 6301
Fax: +852 2869 6372

Arbitrator nominated by the Defendants

Lord Neill of Bladen Q.C.
1 Hare Court
Temple
London EC4Y 7BE
England
Tel: +44 171 353 3171
Fax: +44 171 583 9127

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The ICC Court of Arbitration has confirmed these nominations and the arbitrators have accepted their appointments. The parties confirm that, subject only to the Defendants' contentions referred to in paragraph 3 of Section III, the arbitrators have been validly appointed and that on the date of these Terms of Reference the parties are not aware of any grounds on which they can challenge the arbitrators.

VI. THE PLACE OF ARBITRATION; LANGUAGE

1. The arbitration proceedings shall be held in the Hong Kong Special Administrative Region of the People's Republic of China.

2. This does not preclude the Tribunal from meeting internally or, with the consent of the parties, meeting with the parties and witnesses at any other place or communicating with the parties by conference call, if considered appropriate for the orderly conduct of the arbitration.

3. The award or awards and all procedural decisions of the Tribunal will be deemed conclusively to be made at the seat of the arbitration.

4. The language of the proceedings is English, and evidence submitted in any other language shall be accompanied by a translation of its relevant portions into English.

5. Witnesses may give oral evidence in their own tongue provided that arrangements for interpretation to the

satisfaction of the Arbitral Tribunal are made by the party calling the witness in question.

6. The Interim Award, if any, and the Award will be reasoned and in English.

VII. PROCEDURAL MATTERS

1. The Arbitration proceedings shall be governed by these Terms of Reference and the Rules of Arbitration of the International Chamber of Commerce (1988 Edition). Where these Terms of Reference and the Rules are silent, the proceedings shall be governed by any rules which the parties, or failing them, the Arbitral Tribunal may settle on, subject always to the mandatory rules of the laws of Hong Kong relating to the conduct of arbitration in Hong Kong. The Arbitrators shall not have the power to act as amiable compositeurs.

2. All communications and notifications between the Arbitral Tribunal, the parties and the Secretariat may validly be made by letter, fax or courier; the parties waive the formal requirements of Article 6(2) of the ICC Rules (delivery against receipt or forwarded by registered mail).

3. The ICC Court may extend the time-limit for any Award.

4. The Arbitrators shall enter into the determination of the Jurisdictional Issues and make a ruling in relation thereto by way of a reasoned Award. If the Tribunal should decide that it has jurisdiction to proceed with

this arbitration, the Defendants shall have 45 days following notification of the Interim Award to make any counterclaims that they may wish to assert, and, subject to the order of any court of competent jurisdiction, the Arbitral Tribunal shall proceed with the hearing of the dispute notwithstanding any application to a court arising from the Interim Award. No interim monetary award, awarding either party any part of their respective claims, shall be enforceable until the whole of each party's claims have been determined by the Arbitrators.

5. Any order or direction of the Tribunal shall be valid if signed solely by the Chairman provided that the order or direction states that the Chairman has consulted with the other members of the Tribunal and that they concur.

6. The Chairman shall deal with all procedural matters unless either party or the Chairman considers that the matter should be referred to the full Tribunal.

VIII. ADDITIONAL MATTERS

These Terms of Reference are designed to enable the parties and the Arbitral Tribunal to focus on the matters in dispute in this arbitration. Subject to Article 16 of the ICC Rules, they are not to be understood as foreclosing the making of arguments or introduction of evidence not expressly referred to herein.

SIGNED on by the parties and the Chairman and Members of the Arbitral Tribunal.

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The Honorable Andrew J. Rogers, Q.C.

Neil Kaplan, Q.C.

Lord Neill of Bladen, Q.C.

For the Claimant:

s/ Conrad K. Harper
Conrad K. Harper
Simpson Thacher & Bartlett

For the Respondents:

Eric A. Schwartz
Salans Hertzfeld & Heilbronn

APPENDIX R — LETTER OF THE HONORABLE ANDREW J. ROGERS TO ALL COUNSEL SCHEDULING HEARING IN HONG KONG FOR OCTOBER 26, 1998, DATED JUNE 8, 1998

HON. ANDREW ROGERS QC **LEVEL 7**

233 Macquarie Street
Sydney NSW 2000
Tel (02) 9233 3027
Fax (02) 9233 2966
Mobile 0416 233 302

8 June

Conrad Harper Esq
New York

Eric Schwartz Esq
Paris

Kathleen Fisher Esq
San Francisco

Dear Counsel,

re Chung v Est. of Hillblom & Bk of Saipan.

ICC N-9733

1. It would seem that we have agreement on Oct 26 (if necessary also 27th) as the date for hearing in Hong Kong.

2. Please confirm that there is agreement on the Terms of Reference.

3. To enable me to prepare the Procedural Directions would you please advise me whether any or all of the parties wish to call evidence on the jurisdictional issue in which event I propose to direct that statements of witnesses be exchanged before the briefs are filed unless someone has objections to that course. If you

can let me know as soon as possible I can circulate the proposed Directions next week.

Yours faithfully,
s/ Andrew Rogers

cc Mr. Fernando Mantilla-Serrano

APPENDIX S — EXECUTOR'S MOTION FOR RECONSIDERATION AND DECLARATIONS IN SUPPORT THEREOF IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, CASE NO. 98-70172, DATED MAY 5, 1998

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 98-70172

IN RE BANK OF SAIPAN, EXECUTOR OF THE ESTATE OF LARRY LEE HILLBLOM

Petitioner,

vs.

UNITED STATES DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS,

Respondent.

CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON, and GREENPARK INTERNATIONAL, LTD.,

Real Parties in Interest.

MOTION FOR RECONSIDERATION AND DECLARATIONS IN SUPPORT THEREOF

SETH M. HUFSTEDLER
SHIRLEY M. HUFSTEDLER
KATHLEEN V. FISHER
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
Telephone (415) 268-7000
Facsimile (415) 268-7522
Attorneys for Petitioner
Bank of Saipan

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 98-70172

IN RE BANK OF SAIPAN, EXECUTOR OF THE ESTATE OF LARRY LEE HILLBLOM

Petitioner,

vs.

UNITED STATES DISTRICT COURT FOR THE NORTHERN MARIANA ISLANDS,

Respondent.

CHUNG PO YANG, STEPHEN J. SCHWARTZ, PETER J. DONNICI, WILLIAM A. ROBINSON, and GREENPARK INTERNATIONAL, LTD.,

Real Parties in Interest.

MOTION FOR RECONSIDERATION AND DECLARATIONS IN SUPPORT THEREOF

Summary denial of the Petition for a Prohibition and/or Mandamus is irreconcilable with the only authority cited in the order, *Bauman v. United States District Court*, 557 F.2d 650 (1977) (Hufstedler, Goodwin & Wallace, CJJ). That case identified five guidelines to take into account with respect to the propriety of issuing the extraordinary writ, not all of which have to coexist:

1. "The party seeking the writ has no other adequate means, such as a direct appeal, to obtain the relief he or she desires." (557 F.2d at 654.)

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The sole asserted basis for subject matter jurisdiction in the United States District Court for the Northern Mariana Islands was the Federal Arbitration Act' ("FAA") incorporation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"), 9 U.S.C. §§ 201 and 203, giving federal question jurisdiction to enforce international arbitration agreements when the statutory substantive and procedural conditions have been met. Although those conditions precedent were not met, Chung Po Yang successfully invoked the Convention (a) to remove a part of the claims pending before the Superior Court, sitting in probate, of the Commonwealth of the Northern Mariana Islands ("CNMI"), (b) to obtain an order compelling arbitration of those claims, (c) to stay civil contempt proceedings pending against him, (d) to stay the removed claims and unremoved "related" claims before the Probate Court.

Orders compelling arbitration and orders granting stays pending arbitration are not appealable. *Abernathy v. Southern California Edison,* 885 F.2d 525 (9th Cir. 1989).

2. "The petitioner will be damaged or prejudiced in a way not correctable on appeal." (557 F.2d at 654.)

As these orders stand now, the stay will eventually run its full course. The effects cannot be removed in any way; the interference with sovereignty of the Commonwealth will similarly have occurred in full measure, and the federal court system will have long prevented the Commonwealth from exercising its sovereignty. The administration of the Estate will be affected. The parties cannot be returned to their present status in time and place. The administration of the estate must proceed, and the positions of all the parties will be changed in the interim.

Yet, if on appeal in the future, this Court decides on the merits that the removal was not proper on any one of the several grounds, many months at the least, and probably years will have been lost that cannot be, restored. Several valid grounds are stated in the Petition, none of which has apparently been evaluated on the merits: (1) the conditions permitting removal have not been met: The party removing was not a defendant, but a claimant, and the consents of the necessary parties for removal were not obtained or properly filed; (2) lack of jurisdiction to remove claims from probate proceedings; (3) lack of jurisdiction to remove contempt proceedings; (4) lack of jurisdiction to remove proceedings already begun; (5) waiver of the right to arbitrate by Mr. Chung. The CNMI courts will have been prevented from deciding the sanctions in the contempt proceedings, and from dealing with the claim in probate court. The outcome of those proceedings could affect the administration of the estate and distribution. Compelling arbitration when the party seeking arbitration has waived arbitration as a matter of law and removing a part of probate claims when the party seeking removal has not complied with the conditions precedent to invoking federal jurisdiction cannot be cured by a subsequent appeal invalidating the arbitration and removal. The time lost cannot be recovered; the estate administration must move forward, despite the prejudice caused by federal court intervention to the creditors and beneficiaries of the Estate.

3. "The district court's order is clearly erroneous as a matter of law." (557 F.2d at 654-55.)

The federal court's intervention in the contempt proceeding in the CNMI Superior Court was forbidden by *Juidice v. Vail*, 430 U.S. 327, 336 (1977) ("federal court interference with the

State's contempt process is 'an offense to the State's interest' "); *Guam v. District Court of Guam*, 641 F.2d 816, 820 (9th Cir. 1981) (issuance of stay orders interfering with effective functioning of Guamanian justice system is in excess of federal court jurisdiction warranting mandamus).

4. "The district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules." (557 F.2d at 655.)

This guideline is irrelevant.

5. "The district court's order raises new and important problems, or issues of law of first impression." (557 F.2d at 655.)

The delicate relationship between the federal district court and the developing probate system in the relatively new Commonwealth court system is extremely important. The intervention of the federal district court in civil contempt proceeding is an issue of first impression in the Ninth Circuit and is contrary to *Juidice, supra.* Moreover, the federal court's removal of a portion of claims pending in probate proceedings before the CNMI Superior Court by granting removal and a stay of both removed and unremoved portions of the probate proceeding is not only new in the Ninth Circuit, it is contrary to *Pufahl v. Parks' Estate*, 299 U.S. 217, 226 (1936) (one having a right to go into the federal court . . . cannot obtain a judgment or decree entitling him to interfere with the administration of the *res* by the court having its possession"). *See also, Markham v. Allen*, 326 U.S. 490, 494 (1946) (matters of probate and estate administration are outside the power of federal courts.) Staying unremoved (even if related) claims is in excess of statutory power. 28 U.S.C. § 1446(d).

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Even if removal jurisdiction had been properly invoked and even if the federal district court had subject matter jurisdiction, the district court prejudicially erred in fading to abstain from exercising that jurisdiction as required by the abstention principles of *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 814, 817 (1976).

This Court neither granted nor denied petitioner's motion for leave to file its tendered brief in support of the Petition which documents were filed concurrently with the Petition.

Because this Court is seriously overburdened, the motions panel may have overlooked the importance of the issues presented, the urgency of the petition, and the conflict between the district court's orders and controlling authorities from the Supreme Court and this Court.

The orders of the federal district court are seriously disrupting the administration of the Probate Estate in the CNMI Probate Court. (See Declaration of Seth M. Hufstedler annexed hereto as Exhibit A.) Judicial time of the CNMI judiciary already has been and will be wasted and enormous resources of the Estate will likewise be wasted unless this Court acts promptly to vacate its improvident denial of the extraordinary writ and to reconsider the writ petition.

Petition for an original Writ of Prohibition and/or Mandamus in the Supreme Court of the United States is being concurrently prepared as soon as practicable. (See Declaration of Shirley M. Hufstedler annexed hereto as Exhibit B.)

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Respectfully submitted,

MORRISON & FOERSTER LLP
SETH M. HUFSTEDLER
SHIRLEY M. HUFSTEDLER
KATHLEEN V. FISHER

By: s/ Shirley M. Hufstedler
Shirley M. Hufstedler
Attorneys for Petitioner

Appendix S

CERTIFICATE OF COMPLIANCE

Pursuant to Circuit Rule 32(e)(4), I certify that this Motion for Reconsideration is double-spaced (except for footnotes and quotations) and is printed in proportionately spaced typeface of 14 points, and contains 1246 words.

DATED: May 5, 1998.

Respectfully submitted,

MORRISON & FOERSTER LLP
Seth M. Hufstedler
Shirley M. Hufstedler
Kathleen V. Fisher

By s/ Shirley M. Hufstedler
Shirley M. Hufstedler
Attorneys for Plaintiff/Appellee

Appendix S

EXHIBIT A

DECLARATION OF SHIRLEY M. HUFSTEDLER

I, Shirley M. Hufstedler, in support of the Motion for Reconsideration of the Court's summary denial of the Petition for a Writ of Mandamus and/or Prohibition directed to the United States District Court for the Northern Mariana Islands state:

1. I am currently preparing a Petition for a Writ of Prohibition and/or Mandamus to be filed in the United States Supreme Court within that Court's original jurisdiction.

2. As soon as the Petition has been finally drafted and printed, I shall cause the same to be filed in the Office of the Clerk of the United States Supreme Court.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 5, 1998.

s/ Shirley M. Hufstedler
Shirley M. Hufstedler

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EXHIBIT B

DECLARATION OF SETH M. HUFSTEDLER

I, Seth M. Hufstedler, in support of the Motion for Reconsideration of the Court's summary denial of the Petition for Writ of Mandamus and/or Prohibition directed to the United States District Court for the Northern Mariana Islands state:

1. I am one of counsel for the Bank of Saipan as Executor of the Hillblom Estate now in the Probate Court in the Superior Court of the CNMI.

2. In the Petition for Writ of Mandamus and/or Prohibition in this matter, the Executor has stated several grounds which, in its judgment, require the issuance of such a Writ, or reversal of the orders involved. They include the following grounds:

(1) The conditions required before a matter can be removed have not been met. The party seeking removal was not a defendant; he filed a claim in the probate proceedings and was not, as the District Court described, without citation of any authority, "defendant-like" rather than a claimant; the necessary consents of the other parties were inadequate, and not filed as the statute required.

(2) The federal court lacked jurisdiction to remove a part of a probate proceeding to itself.

(3) The federal court lacked jurisdiction to stay contempt proceedings; in addition, it did not remove the contempt proceedings, and by statute proceedings cannot be stayed without removal.

(4) The federal court lacked jurisdiction to remove a proceeding already begun; the contempt proceeds had not only begun, guilt had been decided and hearings started on the sanctions.

(5) Mr. Chung waived his rights to arbitrate as a matter of law by his extensive participation in court proceedings in the CNMI.

3. If the present rulings stand, Mr. Chung's claims are removed from the probate proceedings, and cannot be dealt with in the administration of the estate. If these rulings are later reversed on any one of the grounds stated, then the parties will have lost months and years, suffered heavy expense, will have their rights distorted, and there will be no way to restore them to the current position.

4. The claim seeks several million dollars, and must be dealt with before the estate can be closed; many other determinations will be affected by the validity or invalidity of the claim and those determinations will be made before an ultimate appeal. Thus many decisions must be made without consideration of the relevant ultimate rulings on Mr. Chung's claims, and the decisions reached may be greatly different from what they would have been had there been rulings in the normal course. Furthermore, the sanctions in the contempt proceedings might deprive Mr. Chung of his claim entirely, or otherwise affect the assets of the estate. A later reversal cannot prevent this interference with the probate of the estate.

5. Delay in closing the estate is detrimental in other respects. If the estate closes on the basis of the present settlement agreement, or under almost any other realistic assumption, many

millions of dollars of estate tax must be paid, and the interest will be running on those amounts at the rate of tens of thousands of dollars per day; in a few years, the entire estate could be wiped out. The estate does not have the time to wait for such a later appeal and determination.

6. Estate administration must proceed in the coming months, with all parties attempting to close the estate. These efforts will be distorted and affected by the unresolved issues now left for later appeal.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 5, 1998.

s/ Seth M. Hufstedler
Seth M. Hufstedler

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PROOF OF SERVICE BY MAIL
(FRAP)

I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

MOTION FOR CONSIDERATION AND DECLARATIONS IN SUPPORT THEREOF

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

SEE ATTACHMENT ONE TO PROOF OF SERVICE BY MAIL

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 6th day of May, 1998.

_____ _____

(typed) (signature)

Appendix S

ATTACHMENT ONE TO PROOF OF SERVICE BY MAIL

Douglas F. Cushnie, Esq.
P.O. Box 949
Saipan MP 96950

Scott Thomas, Esq.
Drobeck Phleger & Harrison
One Market Plaza
Spear Street Tower
San Francisco, CA 94105

Office of the Attorney General
Civil Division
Government of the
Commonwealth of the
Northern Mariana Islands
Saipan, MP 96950

Michael W. Dotts
O'Connor, Dotts & Banes
2nd Floor, Nauru Bldg.
P.O. Box 1969
Saipan, MP 96950

Charles R. Rotbart, Esq.
Law Offices of Charles R.
Rotbart, Esq.
Lim Building
Caller Box 10006, SPS 831
San Jose
Saipan, MP 96950

David Lujan, Esq.
P.O. Box 3249
Agana, Guam 96910

Peter Shack
Deputy Attorney General
1300 I Street
Suite 125
Sacramento, CA 95814

Garrick L. Gallagher
Teilborg, Sanders & Parks
3030 North Third Street
Suite 1300
Phoenix, AZ 95012-3099

Randall T. Fennell
J.E.Tenorio Office Building,
2nd Floor
Gualo Rai
P.O. Box 49CK
Saipan, MP 96950

Bruce Berline, Esq.
Law Office of Bruce Berline
Lizama Building, Second Fl.
P.O. Box 5682 CHRB
Garapan, Saipan MP 96950

APPENDIX T — EXCERPTS (PAGES 1, 6, 18) OF CONFIDENTIAL PORTIONS OF REPLY IN SUPPORT OF PETITION FOR INSTRUCTIONS AND ACTIVITY REPORT BY THE EXECUTOR FOR THE PERIOD MARCH 1, 1998 THROUGH MARCH 31, 1998, AND SUPPLEMENTAL PETITION FOR INSTRUCTIONS WITH REGARD TO SALE OF CHALET LALOU AND VALUATION OF UMDA, DATED MAY 15, 1998

[1] EDUARDO A. CALVO
RODNEY J. JACOB
CALVO AND CLARK
Attorneys at Law
AAA-951, Box 10001
Sablan Building, 2nd Floor
Saipan, MP 96950
TEL: (670) 235-2045
FAX: (670) 235-2776

KATHLEEN V. FISHER
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
TEL: (415) 268-7000
FAX: (415) 268-7522

ATTORNEYS FOR THE BANK OF SAIPAN,
AS EXECUTOR OF THE ESTATE OF
LARRY LEE HILLBLOM

Appendix T

IN THE SUPERIOR COURT

OF THE

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS

CIVIL ACTION NO. 95-626-A

IN THE MATTER OF:

ESTATE OF LARRY LEE HILLBLOM,

Deceased,

CONFIDENTIAL PORTIONS OF REPLY IN SUPPORT OF PETITION FOR INSTRUCTIONS AND ACTIVITY REPORT BY THE EXECUTOR FOR THE PERIOD MARCH 1, 1998 THROUGH MARCH 31, 1998, AND THE SUPPLEMENTAL PETITION FOR INSTRUCTIONS WITH REGARD TO SALE OF CHALET LALOU AND VALUATION OF UMDA

[FILED UNDER SEAL]

Date: May 21, 1998
Time: 1:00 p.m.
Judge: Alexandro C. Castro

* * *

[6] The auditor stated that he had submitted our request for a closing agreement, with a recommendation that the IRS agree,

and he anticipated that the IRS would reach a decision within 60 to 90 days. Although the request for a ruling on the applicability of Section 642(c) under CNMI law has been submitted, the Executor has been given no estimate from the CNMI taxing authorities on the anticipated date for issuance of the ruling, despite repeated requests for this information.

These rulings are conditions to the Settlement Agreement, but do not determine the Estate's U.S. tax liability. The U.S. tax liability of the Estate will not be finally determined until the IRS and the Estate have entered into closing agreements on the individual income tax liability of Mr. Hillblom and the amount of U.S. estate tax. Because the potential tax liability is so great, distributions cannot be made until all the relevant tax issues have been resolved, including the applicability of the U.S. income tax to Mr. Hillblom, the estate tax valuation of all Estate assets and the deductibility of various amounts paid by the Estate. The Executor believes that final closing agreement on all U.S. estate and income tax issues could be entered into no earlier than mid-1999.

The Executor will attempt to have certain issues, such as Mr. Hillblom's individual income tax liability and the valuation of certain Estate assets, definitively resolved before a final closing agreement is reached on all the U.S. income and estate tax issues. If the IRS and the Executor are able to reach agreement on such issues, the remaining potential tax liability of the Estate may be limited to an amount that would permit the Estate to make distributions while maintaining sufficient reserves for the potential tax liability and any unresolved claims by creditors.

The Executor will endeavor to reach such agreements with the IRS at the earliest possible date, consistent with the Settlement

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Agreement and the Executor's fiduciary obligations. In exercising its fiduciary responsibilities, the Executor cannot concede estate tax issues that have merit merely to expedite distributions to the beneficiaries of the Estate. Instead, the Executor must weigh the wide variety of factors that are relevant in determining whether agreement with the IRS on a particular issue is in the best interests of the Estate. In making these decisions, Paragraph VII.E of the Settlement Agreement provides that the ultimate in tax filing positions and all communications with tax authorities are the sole responsibility of the Executor, subject to court approval, although the Executor has in the past and will in the future consult with each Distributee's tax counsel who wishes

* * *

[18] Dated: May 15, 1998

s/ Russell K. Snow
RUSSELL K. SNOW
Trust Officer, Bank of Saipan, Executor

Dated: May 15, 1998

EDUARDO A. CALVO
RODNEY J. JACOB
CALVO & CLARK

KATHLEEN V. FISHER
MORRISON & FOERSTER LLP

s/ Kathleen V. Fisher
By: KATHLEEN V. FISHER
Counsel for the Bank of Saipan, Executor

APPENDIX U — DECLARATION OF PO YANG CHUNG IN SUPPORT OF CERTAIN CLAIMS AGAINST THE ESTATE OF LARRY LEE HILLBLOM, DATED SEPTEMBER 29, 1996

IN THE SUPERIOR COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CIVIL ACTION NO. 95-626

THE MATTER OF THE ESTATE OF

LARRY LEE HILLBLOM,

Deceased.

DECLARATION OF PO YANG CHUNG IN SUPPORT OF CERTAIN CLAIMS AGAINST THE ESTATE OF LARRY LEE HILLBLOM

I, Po Yang Chung, hereby declare:

1. I have personal knowledge of the facts stated herein and if I were called a witness I could and would competently testify as to the matters stated herein.

2. I have been actively involved with the business of the DHL Worldwide Network for more than twenty-five years and worked closely with Larry L. Hillblom in building that business over the years. I was, until 1992, a major shareholder and Chairman of DHL International Limited (Hong Kong), and am presently a shareholder of DHL International Limited (Bermuda).

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3. During the years of 1988 through 1992, I was personally and actively involved in a transaction whereby Japan Air Lines, Lufthansa Airlines and Nissho Iwai Corporation (hereinafter "the New Investors") negotiated for and ultimately purchased certain shares of DHL International Limited (Hong Kong); Middlestown N.V. (Antilles); and DHL Corporation (U.S.).

4. In the course of the negotiation and consummation of the above transaction, certain agreements by and between myself, Larry L. Hillblom, William A. Robinson, Middlestown Limited (Hong Kong), Cherio's Consultancy Services Limited (Hong Kong), L. Patrick Lupo, Peter J. Donnici, Stephen J. Schwartz, H.R.H. Prince Saud Bin Naif Abdulaziz, and Bassam Jabr (hereinafter collectively referred to as "the PARTIES") were made, modified and/or finalized. These agreements give rise to certain claims and rights of some of the PARTIES as against other of the PARTIES.

5. To fully identify claims and rights of claimant PARTIES against Larry L. Hillblorn and his Estate, we must first examine certain transactions in which Hillblorn sold his interests in Monterrey Investment Limited, a holding company for his interest in DHL International (Hong Kong) to me, and later received cash, shares in the new DHL International Limited (of Bermuda) and other assets from me in satisfaction and exchange for the sale of the Monterrey Investment interest.

6. The nature of these claims or rights against Larry L. Hillblom, and now his Estate, are more particularly described below.

Appendix U

I. CLAIMS OF CHEIRO'S CONSULTANCY SERVICES LTD. WILLIAM A. ROBINSON AND PO YANG CHUNG ("THE CHEIRO'S CLAIMANTS") FOR 1,118 CLASS "A" SHARES OF DHL CORPORATION CURRENTLY HELD BY THE ESTATE; AND OF PO YANG CHUNG FOR 388,160 CLASS "B" SHARES CURRENTLY HELD BY THE ESTATE.

7. Funds generated from the New Investors and contributed in common (in agreed percentages) by The Cheiro's Claimants as well as Hillblom were utilized to purchase Class "A" shares in DHL Corporation from other minority shareholders of that company. Although the funds used to purchase such shares were contributed by Hillblom and The Cheiro's Claimants, it was agreed that Larry L. Hillblom would be the sole owner and holder of all shareholder rights and voting rights with respect to such shares. The rights of The Cheiro's Claimants were limited to receipt of cash proceeds from any future sale of such shares.

8. With respect to the DHL Corporation Class "B" stock, such shares had formerly been owned by a subsidiary of DHLI (Hong Kong). By agreement with the New Investors, this asset of DHLI was not to be included in the new DHLI (Bermuda) but instead was to be transferred to a citizen of the United States. Thus, although the "B" shares were an asset of DHLI (Hong Kong), such shares were transferred to Hillblom. Again, Mr. Hillblom held all ownership and shareholder rights in such "B" shares. However, by agreement between Larry Hillblom and myself, I was entitled to approximately 45% of any future proceeds from the sale of such shares.

9. For purposes of this Declaration, I have reviewed Exhibits A through H to the May 21, 1996 "Affidavit of Stephen

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J. Schwartz In Support of Claim Against the Estate of Larry Lee Hillblom" (hereinafter "Schwartz Affidavit"). I hereby incorporate by reference those Exhibits as Exhibits to my present declaration.

10. Upon completion of my arrangements with Hillblom in 1989 (*see* Exhibits A, B and C to Schwartz Affidavit), I proceeded to deal with the New Investors. In order to complete the sale of controlling interest in the DHL international entities to the New Investors, I entered into an agreement styled "DHL International Ltd./Middlestown, N.V. Shareholders Agreement," dated December 7, 1990 (Exhibit D to Schwartz Affidavit) with other parties, including William A. Robinson and Middlestown Limited (Hong Kong), a company commonly owned with Cheiro's whose rights with respect to DHL Corporation shares have been assigned to Cheiro's. This agreement adopts the understandings set forth in the Monterrey Investment Agreement (Exhibit C to Schwartz Affidavit) with respect to the following:

(a) The deduction of transaction costs and certain other expenditures from the common proceeds paid by New Investors (¶ 2, p. 3 of 17);

(b) The capital contribution to DHL Corporation (in exchange for newly issued Class "A" shares) to be made from the common proceeds paid by the New Investors (¶ 3(H), p. 8 of 17);

(c) The purchase of DHL Corporation Class "A" shares from certain minority shareholders funded from the common proceeds paid by the New Investors (¶ 3(K), p. 9 of 17); and

(d) The transfer of all DHL Corporation Class "B" shares ". . . to a U.S. Citizen . . ." (Hillblom) with the understanding that an agreed percentage of the proceeds from any sale of same would be held by him for the benefit of myself, and through me to certain minority shareholders of DHL Corporation and other signatories to the Exhibit D agreement (¶ 5(e), p. 14 of 17).

11. The specific claims of Robinson, Cheiro's and myself to proceeds from any sale of the 1,118 Class "A" shares of DHL Corporation owned by Hillblom are more particularly supported by the following:

(a) *DHL Corporation Class "A" Shares Purchased From Minority Shareholders.*

Based on the relevant documentation (Schwartz Affidavit, Exhibits A through D), between 1990 and 1992, 1,775 Class "A" shares of DHL Corporation were purchased from certain minority shareholders of DHL. All of such shares were transferred to Larry Hillblom and owned by him, even though the funds used to purchase such shares were contributed by Hillblorn, Robinson, myself and Cheiro's. The percentage interests of each in those funds were as follows (*see* Exhibits C and D):

Hillblom	55.4744%
Chung	10.9774%
Robinson	11.6788%
Cheiro's	21.8694%

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Accordingly, the entitlement to proceeds from any sale of *790* (44.5256%) of those 1,775 shares is as follows:

Chung	proceeds from	195 shares
Robinson	proceeds from	207 shares
Cheiro's	proceeds from	388 shares
	Total	790 shares

(b) *DHL Corporation Shares Obtained As A Result of Capital Contribution.*

In 1992, a capital contribution to DHL Corporation was made by Larry L. Hillblom to DHL Corporation in the amount of $19,437,185.00. This capital contribution was made from funds in which I had an interest. As a result of the capital contribution, 1,988 Class "A" shares were issued to Hillblom. Based on the documentation (*see* Exhibit C and D), 328 of those shares are attributable to funds belonging to me, and I am entitled to proceeds from any future sale of those shares. Therefore, the total entitlement of The Cheiro's Claimants herein to proceeds from any future sale of the DHL Corporation Class "A" shares owned by Hillblorn is as follows:

Chung	195 (*see above*) + 328 =	523
Robinson	(*see* above)	207
Cheiro's	(*see* above)	388
Total		1,118

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12. My specific claim to any proceeds from the sale of 388,160 Class "B" shares owned by Larry Hillblom is more particularly supported by the agreements and transactions described above (particularly, the Monterrey Investment Agreement, Exhibit C). All of the DHL Corporation Class "B" shares (800,000) were transferred from a subsidiary DHLI (Hong Kong) to Hillblom. Paragraph 4(c) (pp. 4-6 of 9) of that Agreement expressly describes the entitlement rights regarding those shares or the proceeds from the sale thereof as follows:

> ". . . Upon any future liquidation of such class "B" shares or conversion of such shares to Class "A" voting shares, the proceeds — in cash or new shares — shall be paid or conveyed as follows:
>
> (i) to all current minority U.S. citizen DHLC shareholders (excluding the New Investors) in proportion to their then-current holdings of DHLC Class "A" voting shares;
>
> (ii) the remainder shall be shared by the Parties as follows:
>
> LLH = 55.4744%
> PYC = 44.5256%."

13. By virtue of the above-quoted provision, I as the party contracting with Mr. Hillblom, am to hold 7.2% of any proceeds from such Class "B" shares for the benefit of certain minority Class "A" shareholders of DHL Corporation. These amount to 57,600 shares which Hillblom or I were to hold for the minority shareholders. Of the remaining 742,400 Class "B"

shares, the proceeds from any sale of 44.5256% or 330,560 shares were held for my benefit. Pursuant to a "Shareholders' Agreement (Schwartz Affidavit, Exhibit D at ¶ 5(e), p. 14 of 17), I, in turn, agreed that some of this entitlement to Class "B" share proceeds were to be held by me for the benefit of others, but that is irrelevant to the issues in the present claim.

14. Thus, I am entitled to the proceeds from 388,160 Class "B" shares from the Estate of Larry Lee Hillblom, some of which I will hold for the benefit of other parties.

II. CLAIMS OF L. PATRICK LUPO ("LPL"), PETER J. DONNICI ("PJD") AND STEPHEN J. SCHWARTZ ("SJS") FOR 746 SHARES OF DHL INTERNATIONAL LIMITED (BERMUDA) HELD BY LARRY L. HILLBLOM AND HIS ESTATE.

15. The claims of LPL, PJD and SJS are based on contract as evidenced by the Exhibits to the Schwartz Affidavit, particularly Exhibit C (Monterrey Investment Agreement), Exhibit D (DHL International/Middlestown N.V. Shareholders' Agreement) and Exhibit E thereto. Moreover, for the past 20 to 25 years, LPL, PJD and SJS have performed significant and valuable business and legal services for Larry L. Hillblom, William A. Robinson, Greenpark International (and its predecessor companies) and myself, culminating in their extraordinary work in bringing about the transaction with the New Investors ("The DHLI/MNV Shareholders") which greatly assisted in achieving the growth and success of the DHL Worldwide Network. The agreement, which appears as Exhibit E to the Schwartz Affidavit, is the written memorialization of earlier understandings and commitments made by Larry Hillblom and The DHLI/MNV Shareholders, and constitutes an obligation

to LPL, PJD and SJS by Larry Hillblom (now his Estate) and the other DHLI/MNV Shareholders who are signatories thereto, including myself.

16. Pursuant to the above, claimants LPL, PJD and SJS are entitled to receive shares in DHLI or the cash proceeds from any sale of such shares from the following persons or entities:

Across Town Limited (now Greenpark International Ltd.)	294 shares
William A. Robinson	157 shares
Po Yang Chung	148 shares
Larry L. Hillblom (now Estate of Larry Lee Hillblom)	746 shares

17. Pursuant to the terms of the agreement (Schwartz Affidavit, Exhibit E), parties to the sale of the shares of the DHL international network, myself included, agreed that claimants would receive all dividends paid on the shares in which they had beneficial interests. Until such time as the shares were registered in claimants' names, the dividends would be paid to them as fees. From and after the closing of the second phase of stock sale to the New Investors (August 17, 1992), Mr. Hillblorn and I and the other DHL selling shareholders confirmed the interests of claimants in the shares through payment of fees in lieu of dividends to LPL, PJD and SJS.

18. On February 9, 1993, the selling shareholders, including Larry Hillblom, were notified by PJD that DHL International Limited (Bermuda) had declared a dividend. They

were also notified by PJD of the proposed distribution of the dividend fees due to claimants pursuant to the August 17, 1992 agreements. Each of the selling shareholders and Hillblom consented to payment of the dividend through the Bank Brussels Lambert payment agent account and to the payment of "cash equivalent" fees in lieu of dividend entitlement to claimants LPL, PJD and SJS. *See* Exhibit G to Schwartz Affidavit.

19. Exhibit H to the Schwartz Affidavit represents a schedule of dividends, which were paid by DHL International Limited (Bermuda) from February 1993 until just before Larry Hillblom's death. This schedule reflects the amounts paid to the shareholders and to claimants. This schedule shows that during Larry Hillblom's lifetime all of the dividend fee payments to LPL, PJD and SJS, called for under the agreement of August 17, 1992 (Exhibit E) were honored by the parties, including Larry Hillblom.

20. Pursuant to the arrangements detailed in Exhibits D, E and H, I am holding 148 shares of DHLI (Bermuda) for claimants LPL, PJD and SJS, and have paid them all the dividends received on said shares as dividend fees and have done so since 1993.

III. CLAIM OF H.R.H. PRINCE SAUD BIN NAIF ABDULAZIZ ("PRINCE SAUD") AGAINST THE ESTATE OF LARRY LEE HILLBLOM.

21. In finalizing terms of the transaction with the New Investors, I had discussions with Larry Hillblom and other DHL International ("DHLI") and Middlestown N.V. ("MNV") shareholders, and we recognized that we had obligations to Prince Saud under prior oral agreements dating back to the

middle 1980s. Thus, in June of 1990, these agreements were amended and memorialized in written form. These written agreements are attached as Exhibits A and B to the claim filed in the CNMI Probate Court by Prince Saud against the Estate of Larry Lee Hillblom. Exhibit A attached to the claim contains my signature; the copy of Exhibit B attached to the claim does not contain my signature, although I signed it at the time, and admit that I am bound by its terms.

22. Under the terms of these agreements with Prince Saud, all shares of DHL International (Bermuda), which are held by myself, Larry Hillblom, William Robinson and Greenpark International Ltd., are subject to an appreciation interest held by Prince Saud, calculated in the manner reflected in his claim as filed in the CNMI Probate Court.

23. Under the terms of these agreements, Prince Saud also has a potential interest in the proceeds from any future sale of the DHL Corporation shares in the nature of an appreciation in the value of the DHL Corporation shares in the Hillblom Estate. Again, that interest is calculated in the manner reflected in his claim, and the amendments to that claim.

24. The above represent contractual obligations owed to Prince Saud by Messrs. Larry Hillblom, William Robinson and Greenpark International Ltd. and myself.

IV. CLAIM OF BASSAM JABR TO 472 SHARES OF DHL INTERNATIONAL (BERMUDA) STOCK HELD BY LARRY L. HILLBLOM AND HIS ESTATE.

25. In finalizing terms of the transaction with the New Investors, it was recognized by Larry Hillblom, myself and the

other DHL International and Middlestown N.V. shareholders that said shareholders had an obligation to Bassam Jabr under prior oral agreements that Mr. Jabr was entitled to the proceeds of the sale of two percent (2%) of the stock of DHLI and MNV. In July of 1990, this understanding was memorialized in a written agreement, which is filed in the CNMI Probate Court as Exhibit A to Mr. Jabr's claim against he Estate of Larry Lee Hillblom.

26. Pursuant to that contract, Mr. Jabr is entitled to the proceeds of two percent (2%) of the DHLI (Bermuda) shares held by myself, Larry Hillblom, William Robinson and Greenpark International Ltd. whenever such shares are sold to any buyer.

V. CLAIM OF PO YANG CHUNG TO US$300,000.00 FROM THE ESTATE OF LARRY LEE HILLBLOM.

27. In early May of 1995, prior to his death, Larry Hillblom advised me of his desire to exercise certain rights to purchase additional shares of stock in Continental Airlines, Inc. He stated that he was short of necessary funds to fully exercise his rights and asked if I could loan him approximately US$300,000.00. He stated he would repay me with interest as soon as he could. I agreed to Larry Hillblom's request. We never mentioned an interest rate.

28. In July of 1995, after Larry Hillblom's death, PJD, who had knowledge of the agreement I made with Larry Hillblom, asked if I was still willing to provide such funds in that the stock purchase rights had to be exercised promptly or else the opportunity to purchase Continental Airlines, Inc. stock at below the market price would be lost.

Appendix U

29. I confirmed to PJD my commitment to loan up to US$300,000.00 in funds and authorized him to process a wire transfer in that amount for purchase of the shares.

30. Attached hereto as Exhibit 1 to this Declaration is a true and correct copy of PJD's instructions to Bank Brussels Lambert to transfer US$300,000.00 to the Air Partners, Limited Partnership for purposes of purchasing additional shares of Continental Airlines, Inc. These funds, belonging to me and no one else, came from my Account No. 301-0093833-18 at Bank Brussels Lambert. I have, to date, receive no re-payment of this advance, which I made for the benefit of Larry Hillblom's Estate.

I declare under penalty of perjury that the foregoing is true and correct, and is based on my personal knowledge. If called as a witness, I could testify as to the facts set forth herein.

Executed at Hong Kong, on this 29th day of September, 1996.

s/ Po Yang Chung
PO YANG CHUNG

Appendix U

Exhibit "1"

7-24-95

PJD:

Attached is the BBL bank confirmation rec'd today re wire transfer of funds from Po Chung's BBL Internal Acct. to Air Partners, L.P. for US $300,000.

Back to me for the file.

DONNICI, KERWIN & DONNICI
One Post Street, Suite 2450
San Francisco, California 94104-5228
Telephone: (415) 986-8881
Facsimile: (415) 986-6203

FACSIMILE COVER SHEET

IMPORTANT

This message is intended only for the use of the individual(s) or entity(ies) to which it is addressed and may contain information that is privileged, confidential, and/or exempt from disclosure by applicable law or court order. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the United States Postal Service. Thank you.

Appendix U

DATE: July 20, 1995

TO: Mr. J. Mamere Fax No.: (011)32-2-547-2665

Ms. Eva Bogaeris Fax No.: (011)32-2-547-3119

FROM: Peter J. Donnici

NO. OF PAGES (including this cover sheet): - 3 -

If there are problems in the transmission, please call Ryan Halog of this office ***AS SOON AS POSSIBLE*** at (415) 986-8881.

MESSAGE

Re: *Funds Transfers from BBL Internal Acct. #301-0093833-18*
(Amount: US$300,000.00)
(Payee: Air Partners, L.P.)

P.S. Would you be so kind to confirm this request with me by return fax indicating therein the exact value date as to when this particular wire transfer instruction was completed by your bank. Thank you.

Executed value 2417195

Appendix U

DONNICI, KERWIN & DONNICI
ATTORNEYS AND COUNSELORS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ONE POST STREET
SUITE 2450
SAN FRANCISCO, CALIFORNIA 94104-5228
TELEPHONE: (415) 986-8881
FACSIMILE: (415) 986-6203

PETER J. DONNICI
DENNIS C. KERWIN
PATRICK M. DONNICI*

K. RICHARD LINDOW, JR.
ALAN R. GERALDI
LORI A. FARBER

OF COUNSEL
LARRY L. HILLBLOM
JED T. ORME, JR.
MARGARET A. PHILLIPS
JAMES G. REDMOND

*A PROFESSIONAL CORPORATION

July 20, 1995

By Facsimile: (011) 32-2-547-2665
(Original to Follow by DHL Worldwide Express)

Mr. J. Mamere
Back-office International Credits
Banque Bruxelles Lambert S.A.
Avenue Marnix 24
1050 Bruxelles
Belgium

Re: *Funds Transfers from BBL Internal Account No. 301-0093833-18*

Appendix U

Dear Mr. Mamere:

Reference is made to BBL Internal Account No. 301-0093833-18 (Chung Po Yang) for which I am sole payment instruction agent. Please be advised that you are *not* authorized to provide information concerning the transfers described herein to any other parties.

I hereby authorize and instruct you to transer funds from Chung Po Yang's Account, BBL Internal Account No. 301-0093833-18, as follows:

Please wire transfer good funds in the amount of US$300,000.00 as follows:

Bank	Texas Commerce Bank - Houston
Account name:	Air Partners, L.P.
Account No.:	07303006327
ABA Routing No.:	113000609.

It is important that the funds being wire transferred pursuant to the above instruction be received in the above-referenced account on or before Monday, July 24, 1995

Thank you for your continued courtesy and assistance in this matter.

Appendix U

Sincerely,

s/ Peter J. Donnici
Peter J. Donnici

PJD:rdh
MC95-00358

cc: [By DHL Worldwide Express]
Stephen J. Schwartz, Esq.

APPENDIX V — EXCERPTS (PAGES 1, 15, 26) OF REPLY IN SUPPORT OF PETITION FOR INSTRUCTIONS AND ACTIVITY REPORT BY THE EXECUTOR FOR THE PERIOD APRIL 1, 1998 THROUGH APRIL 30, 1998, DATED JUNE 12, 1998

[1] EDUARDO A. CALVO
RODNEY J. JACOB
CALVO AND CLARK
Attorneys at Law
AAA-951
Box 10001
Sablan Building, 2nd Floor
Chalan Kanoa
Saipan MP 96950
TEL (670) 235-2045
FAX (670) 235-2776

KATHLEEN V. FISHER
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
TEL (415) 268-7000
FAX (415) 268-7522

ATTORNEYS FOR BANK OF SAIPAN,
EXECUTOR

Appendix V

IN THE SUPERIOR COURT

OF THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CIVIL ACTION NO. 95-626-A

IN THE MATTER OF:

ESTATE OF LARRY L. HILLBLOM,

Deceased.

REPLY IN SUPPORT OF PETITION FOR INSTRUCTIONS AND ACTIVITY REPORT BY THE EXECUTOR FOR THE PERIOD APRIL 1, 1998 THROUGH APRIL 30, 1998

Date: June 18, 1998
Time: 1:30 p.m.
Judge: Alexandro C. Castro

The Bank of Saipan, as Executor ("Executor"), submits this reply (the "Reply") in support of its Petition for Instructions and Activity Report for the Period April 1, 1998,

* * *

Appendix V

[15] VI. STATUS OF ANCILLARY PROBATE PROCEEDINGS

As reported in the Petition, the Executor awaited verification from Laurel's counsel of compliance with the Philippine Court's April 3, 1998 conditional approval of the Settlement Agreement. The April 3 order approved Laurel's entry into the Settlement Agreement on the condition that Laurel's counsel provide the Philippine Court with certified copies of various documents within 30 days of receipt of the order. On June 3, 1998 (PST), counsel for Salvador Laurel provided the Executor's counsel with a facsimile of a document entitled "Compliance" which is court-stamped received April 30, 1998 by the Philippine Regional Trial Court. A copy of the document is attached hereto as Exhibit 1. The document indicates that Laurel's Philippine counsel timely filed certified copies of the requested documents with the Philippine Court.

On June 8, 1998 (PST), Eugene Majeski, as Administrator with Will Annexed of the California ancillary probate proceedings of the California Estate, the Executor, as Special Administrator of the Idaho ancillary probate proceedings of the Idaho Estate, and Noel A. Laman, as Special Administrator of the Philippine ancillary probate proceedings of the Estate filed the petitions required under Paragraphs X.F and XI.C. Hearings on those petitions are scheduled as follows: California, July 8, 1998 at 9:00 a.m.; Idaho; August 10, 1998 at 9:00 a.m.; Philippines, July 3, 1998 at 8:30 a.m. As required by Paragraph XI.C, the Trust and David Moncrieff, who did not provide the Executor with his written consent to the ancillary probate petitions (other than the Philippine petition) must now file papers to join in those petitions.

Copies of the aforementioned petitions (without exhibits) are attached hereto as Exhibit J. The Executor omits the afore

mentioned petitions from the Reply served on the parties as the ancillary petitions have been served on the parties separately.

* * *

[26] Dated: June 12, 1998

s/ Russell K. Snow
RUSSELL K. SNOW
Trust Officer, Bank of Saipan, Executor

Dated: June 12, 1998

EDUARDO A. CALVO
RODNEY J. JACOB
CALVO & CLARK

KATHLEEN V. FISHER
MORRISON & FOERSTER LLP

s/ Kathleen V. Fisher
By: KATHLEEN V. FISHER
Counsel for the Bank of Saipan, Executor